



University
of Glasgow

<https://theses.gla.ac.uk/>

Theses Digitisation:

<https://www.gla.ac.uk/myglasgow/research/enlighten/theses/digitisation/>

This is a digitised version of the original print thesis.

Copyright and moral rights for this work are retained by the author

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge

This work cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given

Enlighten: Theses

<https://theses.gla.ac.uk/>
research-enlighten@glasgow.ac.uk

THE UNIVERSITY OF GLASGOW,
DEPARTMENT OF JURISPRUDENCE.



AN EXPOSITION OF THE IDEA OF JUSTICE

IN ITS RELATIONS TO

SOCIALIST AND COMMUNIST IDEOLOGY

BEING THE THESIS OF

TOM FAICHNEY CUNNINGHAM LL.B., D.T.S., M.I.T.S.A.

SUBMITTED FOR THE DEGREE OF MASTER OF LAWS,
APRIL 1986.

ProQuest Number: 10948110

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest 10948110

Published by ProQuest LLC (2018). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code
Microform Edition © ProQuest LLC.

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ACKNOWLEDGEMENTS

I owe an immense debt of gratitude to my supervisor and mentor, Professor Tom Campbell, without whose firm guidance and boundless patience this essay would never have materialised in anything resembling its present form. Professor Campbell's own writings have exerted, and will hopefully continue to exert, a powerful influence on my perception of the domain of legal philosophy, as articulated here. I am also indebted to those members of staff at the University of Glasgow, particularly Mr. David Goldberg and Dr. Olivia Robinson, who have freely extended both practical assistance and moral support over the years. Mention must also be made of Dr. William Lyons of the Moral Philosophy Department. Had it not been for my attendance, during session 1979 - 80, at the series of lectures offered by Dr. Lyons under the title of "Problems in Moral Philosophy", the general preoccupations of Chapter One would probably never have dawned on me. Whereas much of the credit, then, lies elsewhere, the responsibility for this essay and its shortcomings cannot be delegated, but rests with me alone.

I am indebted also to the Clerk and Governors of the Charles K. Marr Educational Trust for their support.

Thanks are also owed to my sister Sheila, whose efforts on my behalf would put many a professional typist to shame, and also to my friend Mr. Peter Lavery, who took the photograph which appears on the title page.

Tom F. Cunningham,
Manchester, April 1986.

CONTENTS

CHAPTER 1	<u>ON MATTERS OF FORM AND METHODOLOGY</u>	P.1
SECTION	(i) SOME PRELIMINARY CONSIDERATIONS.	1
	(ii) ARE NORMATIVE UTTERANCES MEANINGFUL?	5
	(iii) THE FUNDAMENTAL JUDGEMENT OF VALUE.	19
	(iv) DEONTOLOGY VERSUS CONSEQUENTIALISM.	26
	(v) THE DIALECTICAL METHODOLOGY.	32
	(vi) THE DUALISTIC APPROACH TO THE IDEA OF JUSTICE.	35
CHAPTER 2	<u>ALIENATION, LAW AND REASON; AN ACCOUNT OF THE CULTURAL EVOLUTION OF MANKIND</u>	41
	(i) ON NATURE.	41
	(ii) ON SOCIETY.	44
	(iii) ON THE DEVELOPMENT OF HUMAN SOCIETY.	61
CHAPTER 3	<u>TWO STRANDS OF BOURGEOIS IDEOLOGY</u>	70
	(i) INTRODUCTORY.	70
	(ii) PROFESSOR NOZICK AND THE PRINCIPLE OF NATURAL LIBERTY.	70
	(iii) PROFESSOR HAYEK'S SPONTANEOUS ORDER.	95
	(iv) CAPITALIST SOCIETY.	103
CHAPTER 4	<u>SOCIALISM, COMMUNISM AND JUSTICE</u>	110
	(i) SOME PRELIMINARY CONSIDERATIONS.	110
	(ii) AN EXPOSITION OF THE MARXIAN THEORY OF JUSTICE.	117
	(iii) THE WITHERING AWAY OF LAW AND STATE.	147
	(iv) TROTSKY'S REVOLUTIONARY MORALITY; THE ETHICS OF INSURRECTION.	163
CHAPTER 5	<u>THE MODERN AGE</u>	168
	(i) REVOLUTION VERSUS REFORM.	168
	(ii) THE FRONTIERS OF JUSTICE.	179

SUMMARY

As indicated by its title, the itinerary of this thesis consists in the task of tracing the dialectical movement of the concept of justice, (which analysis itself follows the highest phases in the progression of the concept of will), and then, as this concept becomes relatively determinate, in establishing its relationship to the historically emergent ideologies of socialism and communism.

Whilst declining to espouse Hegel's wider thesis that the entirety of objective reality, inclusive of the laws of natural science, is an externalised construction or creation of mind or spirit (which alone is ultimately real), I adopt a modified version of Hegel's thorough-going idealism. According to my view, firstly, natural forces are, to some extent at least, capable of being consciously understood and directed according to human purposes; and secondly, there are indeed forces and processes which have their origin in conscious human behaviour, in the form of competitive interaction, but which frequently assume an immediate appearance of external and even hostile necessity. This position enables me to interpret the history of human society as an ongoing dialectical interaction of mind with itself, in its articulated conscious form on the one hand, and its externalised, objectified form on the other, and to conclude that the highest and perfect form of human society is that which succeeds in resolving this opposition. Further, it follows that the development of justice runs parallel to the wider movement of social advance, since justice, that is, a system of universal, general rules for the regulation of the activities of competing self-interested agents, is the primary means by which this resolution is effected.

The opening chapter examines the formal anatomy of justice and seeks to locate the theory of justice within a definite metaethical position. In so doing, I explore the nature of the logical nexus between the form and substance of ethical values, concluding that since values are not to be found as naturally self-subsistent entities in the real world, they must be the products of social convention. Far, however, from this committing me to a form of ethical relativism, it follows that justice is a functional device, differing only from the other such articulations of conscious

design in the mode of its creation, and as such the function thereby disclosed yields a logically necessary criterion for the evaluation of the successive conceptions of justice, and at the same time determines the substance of the highest form, or Idea, of justice, together with the phases of this development. This theme is resumed in the second chapter, which introduces the elemental concepts of cultural evolution, and at the same time sets out to discover what the function is; this enquiry proceeds from the question of what the world would be like without imperative rules for the regulation of personal conduct, and from this there emerges confirmation of the assertion that the function of justice lies in the effecting of a resolution of the opposition referred to in the second paragraph. A central concern of this section is a detailed examination of Hobbes' state of nature.

Having come this far, it now becomes possible to continue the second chapter with an exposition and appraisal of the successive historically emergent conceptions of justice. Firstly, we encounter those taboo moralities associated with primitive charismatic religions, in which man's position at the centre of the ethical universe goes unsuspected, and in which the validity of moral and legal positive values is taken to be contingent upon and to reflect a necessary natural or even divine order. As a consequence of this mode of consciousness, characterised by a general incapacity for evaluating values themselves, all existing status and normative ideology is taken as absolute, and the substance of social norms for the most part bears no reference to the needs and requirements of humanity; conduct which is in itself harmless is frequently proscribed, generally under pain of the severest penalties, while several forms of harmful behaviour continue to be permitted. This ethical outlook presents a contradiction of the profoundest sort, for at this time law and morality are creations all perception of whose nature and origins is lost to their creators. This form of estrangement is carried over into the feudal epoch, the laws and social forms of which arise as the necessary response to the chronic social instability which precedes it; this phase rests, however, upon the forceable exploitation by the rulers of the ruled, and upon rigid and ultimately arbitrary distinctions of status. It is not reason, but an intermarriage of violence and unquestioning social

custom misrepresented as divine will which here is sovereign; this melancholy condition of things continues intact until the vital principle of moral autonomy, in the form of the paramount significance of the individual conscience, is heralded by the Protestant Reformation. This precept which identifies reason, and not mere customary acceptance as sovereign, is an essential element in Hegel's philosophy, but as Hegel goes on to demonstrate, it is, when standing alone, one sided and therefore conceptually inadequate. For where there is only "subjective freedom", the consequence is either the melancholy withdrawal of the subject from an external world which is devoid of reason or meaning, much as is characteristic of the negative philosophies of Stoicism, Epicureanism and Scepticism, or else the collapse of society into chaos in the face of the absence of any uniform and universally accepted code of values. What is in fact required is a form of society which embraces and reconciles both the demands of free personal reflection and also the spontaneous community which, so Hegel claims, was to be found in Ancient Greece. The synthesis of these elements is a condition of things in which there is both subjective and objective freedom, since in it society is so constituted as to embody the principles of universal reason and as such commands the free and spontaneous allegiance of all thinking beings. Hegel identifies this condition as the state of rational freedom.

As the conditions which give rise to the necessity for feudalism dissolve, it is supplanted by the bourgeois conception of justice which is specific to the capitalist age, and is founded on equality before the law, private property, and liberty of contract and therefore of economic activity. The normative ideology of this epoch, with which the third chapter is concerned, is exemplified by the works of two contemporary theorists, Nozick and Hayek. The former of these scholars bases his defence of unrestrained capitalism, in the shape of his "entitlement theory" of justice in holdings, upon natural law considerations, but runs into the theoretical problems encountered in the difficulty of accounting for the ontological foundations of such a system, and, related to this, in the difficulty of establishing a self-evident or even coherent substantive principle of original acquisition, such a principle being indispensable to his position.

Hayek, on the other hand, while reaching conclusions which

are broadly similar to Nozick's, proceeds not from natural law assumptions, but from a eulogy of the allegedly self-regulatory nature of the free market order, within which individuals are related by the abstract rules of civil society. The inhabitants of this society are at liberty to pursue their own particular ends, being constrained only in the means by which they do so. Hayek, unlike Nozick, attains a perception of justice as essentially a functional device, and advances the claim that the conception of justice which he espouses is sufficient to resolve the tension or opposition of particular to general interests. For rules as such have no purpose, in the sense of specific ends to be brought about, but possess the function of maintaining the conditions in which spontaneous order is conserved. Within this structure, individuals find that their prosperity lies in responding to the "signals", in the form of fluctuations in prices, wages etc., generated by the market order, which lead them not only to the most lucrative forms of activity, but also to those which are most generally desired. Such an advocacy of reliance on the spontaneously arising mechanisms of the market claims that the abstract or formal rules of civil society are adequate to co-ordinate the activities of indefinite numbers of otherwise unconnected persons; it purports, in short, to discover in civil society nothing less than the embodiment of universal reason envisaged by Hegel as the necessary complement to the otherwise incomplete principle of moral autonomy, and to which free, rational individuals will spontaneously conform.

However, at second glance, Hayek's theory appears deficient, in that the forces and processes arising out of economic competition, even within a system of rules, are by no means part of a mysterious providence, but are by their nature a wholly random mixture of processes (which here are represented as reflexes of movements within an overall principle of motion, and, consequently, development, which are treated as inferential rather than causal in nature), some of which happen to accord with human design, and others which promote chaos. Indeed, as the bourgeois age and its attendant mode of production advance to their mature form, the signals thrown up by the market order grow increasingly misleading, and humanity is ever more cast into a radical economic and social insecurity. Any

improvement upon the state of nature envisaged by Hobbes and indeed upon nature as it originally presents itself, is merely relative, for humanity remains, although at a higher level, divided against itself, and as such, dominated by its own actions turned against it in apparently alien form.

Since it is at this stage in the development of human society, according to Marx and Engels, that the stage is set for its reconstitution on the basis of the common ownership of the means of production, I now turn my attention, in the fourth chapter, to the conception of justice advanced by those theorists, or at any rate to the implications of their works for the theory of justice. I consider the remarkable variety of interpretations which have followed in the wake of Marx's pronouncements on distributive justice, and emphatically reject the naive view that Marx equated communism - in which all receive according to their needs and contribute labour in accordance with their abilities - with both justice and equality, or even with either of these. I cannot consider that a scrutiny of Marx's writings warrants such a construction, and in any case such an approach treats justice as being devoid of any definite conceptual boundaries. I then proceed to examine the extent to which the socialist principle of distribution in proportion to labour contribution - which according to Marx would be characteristic of the first phase of post-revolutionary society - is capable of resolving the theoretical and practical inadequacies of the bourgeois conception of justice earlier considered. I then examine and endorse the thesis that Marx considered that communist society, the second phase of post-revolutionary society, would represent not justice made actual, nor the supercession of any specific conception of justice, but the supercession of the concept of justice as such. Since justice is specifically concerned with the regulation of the interaction of competing groups and individuals, it follows that all considerations of justice would become redundant and superfluous in a community based not on competition, but on the unlimited and spontaneous co-operation of all. I then proceed to a critical scrutiny of the doctrine of the withering away of law and state, and examine whether rule-governed behaviour would hold any place in a society which has outgrown the need for organised coercion. This section includes an analysis of the relationship between communism as envisaged by Marx,

and Hegel's state of rational freedom, and also takes up the theme of the transformation of human nature which Marx and his followers appear to claim would take place in communist society.

In the fifth and concluding chapter, I seek to put forward a comprehensive picture of modern society, and to analyse the legislative forms of the great social democracies of the present time, in the light of the concepts examined in the first four. Inter alia, I conclude that welfare legislation is to be considered not as founded upon justice, but as the overriding of justice by other ethical considerations - that is, other elements of Right - such as humanity, utility and so forth. It is this approach of recognising the concept of justice as possessing definite conceptual boundaries which enables it to be considered as an object of rational contemplation.

Chapter I: Matters of Form and Methodology and their
Relation to Substance.

"Morality is not to be discovered but to be made". (1)

(i) Some Preliminary Considerations.

It would appear a sound enough procedure to commence with a general consideration of the province of definition, in such a fashion as to take account of the various essentially formal elements of Right (2), each in its contingent relations with the others. Such an analysis is certainly necessary and indispensable, if any attempt at a comprehensive systematic unity is to be made. Towards this end, I consider that a definite task confronting me in this chapter is the presentation, and, hopefully, even a resolution of various central problems of legal and ethical theory, with the general aim that such deliberations shall re-emerge throughout the subsequent chapters as central, uniting themes casting light on all that follows. Generally then, the later chapters are concerned with the norms or values which are, or are asserted to be, the content or substance of justice, that is, with first order matters; the present chapter is exclusively concerned with second order questions, that is, with the ontological problems of the nature, status and definition of normative terms and propositions.

Much unnecessary confusion can be averted in advance by giving consideration to the dichotomy of definition, that is to say, the sphere of analytical propositions or logically necessary truths (which represent one facet of second order matters), on the one hand, and on the other, assertion, the realm of value judgements (which latter are always and exclusively first order and therefore synthetic). Such an enterprise is most important, and must be kept in mind in order to comprehend the dialectical interpenetration of these opposites, and thus to perceive their point of conceptual synthesis. (3). More basically, in drawing such a division, one precludes much sophistry and illusory inference, both intended and otherwise, such as is occasioned by the illicit movement from the analytic to the synthetic. (4) Of this tendency, the presentation of tautologies as substantive truths is the paradigm form.

Corresponding to this distinction, questions of the structure

"what is ...?" admit of two distinct interpretations, and therefore of two distinct forms of answer. As an example, "what is the tare weight?" might correctly be answered either by "fifteen ounces", or by "the weight of the container when empty", depending on how the question was intended. Conversely, definition is a limited enterprise, and leaves unanswered, indeed unconsidered, the question of how we ought to behave. (It must, however, be conceded that certain terms such as "courageous", "cowardly", "generous", and "mean" have come to possess such eulogistic or dislogistic connotations so that particular value judgements might be said to be incorporated in the definitions of these terms. (5) Argument concerning moral or legal values, such as takes place between moral philosophers, and almost daily in the courts of law, far from being dispute over definition, actually requires and presupposes consensus on matters of definition in order to be meaningful. An argument which comprises disputes falling into both categories, as if they were one, is doomed to become hopelessly confused.

Applying this to the theory of justice, one feels that Kelsen's essay What is Justice? (6) involves itself from the outset in much unnecessary confusion by reason of its, I would contend, misconceived title. Many philosophers, particularly in the present century, have drawn attention to the vital importance of correctly framing one's questions (7); in Kelsen's essay, the question at issue is rendered at least open to confusion, because the title creates the illusion that what are, in reality, two distinct enquiries, indeed, two different modes of enquiry, are one.

To proceed; law (and therefore justice) involves, in general terms, the resolution of the tension between the particular and the universal (8). In its normative sense it consists in a system of rules prescribing and evaluating human conduct; in common with other, subsidiary, forms of Right, such as positive morality and value systems associated with particular religions, it derives its systematic unity, that is, its character as an order (9) as opposed to being a variety of unconnected and unrelated normative statements, from its formal conceptual hierarchy, descending from a single purely formal groundnorm of unrestricted generality to an in principle infinite variety of single judgements, by way of a process of subsumption (10), and, in the case of law (and also in particular forms of organised religious orders), delegation (10) also. This latter category is,

however, of limited significance. We may say, provisionally, that justice is in some sense the substantively, and of course the formally ideal legal order, it being only in the face of the indeterminacies of actual positive legal systems that specific norms can be said to be created by authoritative judgements rather than by means of unaided conceptual necessity. The concepts of law and justice are analytically tied, but the relationship is not one of mere synonymy. Justice is a noumenon, an absolute, against which all phenomenal, particular legal systems and the norms thereof stand to be evaluated. (11)

In passing, it is necessary for me to clarify the nature of the distinction between formal and substantial justice, since much depends upon it. Formal justice merely places constraints upon the application of legal norms, imposing the requirements of impartiality, but does not bear upon the substance of these norms. On the other hand, substantial or substantive theories of justice actually provide, or purport to provide, a basis for the preference of one particular norm or system of norms against others. (12)

A normative order is by definition a systematic hierarchy of norms, in descending order of the generality of such ought-propositions, and rights and duties are best understood as components of these values, or ways of describing them from different perspectives. For instance, if we can deduce within a specific order the conclusion that Mr. Jones must perform a certain action, or alternatively must refrain from it, such as fulfilling a term of a contract which he has entered into, or abstaining from conduct stigmatised as a crime or delict, we can say that, in terms of that order, he has a duty. Again, if there is a rule whose effect is to secure him against a certain type of action by others, in particular or generally, we may say that he possesses a right. Such terms as rights and duties, then, do not even purport to refer to descriptive entities, as has been erroneously supposed eg. by Alf Ross, (13) but merely afford a convenient short-hand (14) method of focussing upon the application or operation of norms in relation to specific individuals; such propositions as employ these terms, incidentally, demonstrate, as has been remarked by Searle (15), that not all normative statements assume the grammatical structure of "ought" propositions.

Further, the character or pedigree of any normative system, as being religious, moral or legal, depends wholly upon and is

fixed by the nature of the formal groundnorm implicit in it, that is, its internal reference to compliance with the will of a postulated deity, (or of institutions allegedly possessing divine origin), to social approval or disapproval, or to a formally constituted assembly, document or even the will of a single rational person. One might clarify this contention by recourse to a single example. I have frequently heard religious believers, challenged to produce evidence supporting their views, fall back upon the assertion that the essence of the Christian faith and the truth thereof is the principle of love for one's fellow man. From this, I have been asked to accept, there follows the truth of God's creation, salvation through Christ, original sin, Heaven and Hell, (as if the intermediate logical steps are altogether too obvious to require to be expressly drawn attention to), and, on the occasions when the proponent of this view has happened to be a Roman Catholic, the exclusive mission and authority of "the Church", and papal infallibility also. The catalogue of fallacies involved in this thoroughly muddled line of "thought" could fill a volume by itself, but what I wish to point out here is this, that this fraternity principle by itself holds no necessary connection with Christianity, nor indeed with any religion. It might, and indeed has been by militantly atheistic communists (16), quite easily be preferred out of a purely humanistic, secular, concern for one's fellows; it is a religious norm only insofar as it is subscribed to out of compliance with what is asserted to be the expression of the will of a postulated deity, and even then the connection is an accidental, not an essential one.

This much, the formal autonomy of each type of value system from the others, follows analytically, and much confusion can be avoided in advance by bearing this conclusion in mind. Even Plato (17) involved himself in much misconceived discussion, in wrestling with the problem of why one ought to obey the law, and why one ought to be morally good; but this much is quite unproblematic, one ought to be morally good simply by reason of what these words mean, that is, by definition. Similarly, one has a legal duty to obey the law, simply because what the law prescribes is synonymous with what are one's legal duties. In neither instance is it necessary, as Plato attempts to do, to advance separate reasons, prudential or normative,

hypothetical or categorical, in order to validly support these conclusions.

It is, however, equally vital to understand what this does not entail, as to understand what it does. It does not follow, on the strength of this reasoning, that one has an a priori moral obligation to comply with the provisions of any legal system, that is, one must not be led to infer the identity of all normative orders from their common normative structure. As Lloyd explains in the course of his exposition of Kelsen's The Pure Theory of Law,

'Ought' here does not refer to moral obligation but simply to the normative form of legal propositions. (18)

Duties under the various particular legal systems can and do conflict with each other, and with duties under religious and positive moral orders; and furthermore, as I shall shortly attempt to establish, it is a perfectly simple task to cite examples of legal rules, past and present, which can scarcely fail but offend against conscience, one's perception of what the substance of actual legal systems ought to be.

(ii) Are Normative Utterances Meaningful?

It will be noticed that the foregoing is a rough outline of the definitional structures of all the various forms of normative system; anything more elaborate is, regrettably, outwith the scope of this present work. As such, the foregoing does not concern itself with actual values, which are synthetic, not merely analytical, and thus accords with contemporary analytical jurisprudence, such as is expounded by Hans Kelsen and H. L. A. Hart; from the merely formal point of view, systems of law, positive morality etc., can without any logical contradiction possess any content whatsoever. (19)

This result, no doubt, will appear as less than satisfactory, particularly for the present work, which after all, attempts to consider the norms of justice. Such formal analysis cannot issue us with substantive rules to direct our conduct, nor does it even purport to do so. Again I must stress the vital importance of keeping the two functions of definition and assertion separate in

one's mind; if you put to me the question of how you ought to live, and I reply that you should do your duty, or do the right and abjure the wrong, or some such thing, then I have not answered your question, I have merely rephrased it.

At the outset, I made it clear that the central aim of this chapter is the consideration of various second order problems such that confront all the diverse theories of justice, simply by virtue of their common nature as such. I am thus led to a consideration of the nature and status of normative, (primarily ethical), propositions generally, and of whether they can be considered to be meaningful at all. This latter, especially, appears as a vital issue, since if the answer be the negative, the whole of this enquiry needs must end here.

To this question, there are, at first sight at least, four possible answers. Firstly, there is the school of thought in ethics which treats the authentic norms of justice as being objectively valid and cognisable for all times and persons, independently of custom in any form. This position, (more often implied and founded upon than explicitly defended), as exemplified by Professor Nozick (20), is known as objectivism, and has a juridical analogy in the doctrine of natural law (21), which holds that there exists a system of legal norms binding on all men, and on which all particular conventional legal systems depend for their ultimate validity. (This relation is all the more apparent where ethics and law are treated as being coterminous). It is with this position that natural rights and human rights tend to be associated. At the opposite end of the scale, and arising no doubt as a reaction against this first position, is the view tending to be associated with logical positivism that normative utterances are meaningless. (22) If this be the truth of the matter, then not even a formal analysis of the anatomy of legal and ethical structures (in the sense of the analysis undertaken by Kelsen in the General Theory of Law and State is possible. The absurdity, after all, of seeking to trace the analytical connections of terms contended to be meaningless, (in the present context, rights, duties, norms and so forth), must surely be obvious. Thirdly, there is a less thoroughgoing form of value scepticism, which at least concedes grammatical meaning to normative terms, but denies that they possess any semantic reference;

be this so, a formal analysis is possible, but little more. Thus, according to this view, ethical terms such as "good" can be defined but have no place in the real world, just as no one can perfectly coherently depict a unicorn, although, as a matter of empirical fact there is no such thing. Logical coherence is a necessary, but by no means sufficient condition for the de facto existence of a particular object of thought. To be meaningless, a term must not only not possess semantic reference, but also be in principle incapable of doing so. Such a term, then, having no place even in the world of forms, might be "omnipotence". Consider the following; "If X is omnipotent, can he create a stone so large that he cannot lift it?"

For "X" might be substituted God, Allah, the pope, Hitler, Stalin, or Jones, but the central point remains this, that whether one answers in the affirmative or the negative, one is forced to confess to a limitation on X's power. The concept of omnipotence - insofar as the word is taken to denote completely unlimited power - in itself involves irresolvable contradictions, and as such must be rejected. It is only if normative terms can be shown to be similarly incoherent that they can be concluded to be meaningless.

In the light of the foregoing, it can be seen that it is procedurally sound to commence with problems of definition, since of necessity all question of meaning precedes that of semantic reference. Thus, God is the transcendent author of the Universe, simply as a matter of definition, and quite independently of whether God possesses objective existence or not; the question of God's existence is precisely coterminous and synonymous with that of the existence of a transcendent author of the Universe. In this way, as J.L. Mackie points out (23), a claim to objectivity, in the sense of concrete autonomy from merely subjective will, and to unrestricted universality and generality, are definitive features of morality as generally conceived of, if not articulated as such, irrespectively of whether these claims possess any de facto foundation or not. (24) Fourthly and finally, there is ethical, (and associated with this, legal), relativism. (25) These doctrines hold that utterances made concerning systems of

law and positive morality, although not meaningless, can and do vary with time and place, and that no actual system of values, endowed with substance by the force of social convention alone, can correctly be said to possess any higher measure of authenticity than any other, actual or possible. According to such a view, the criteria of what constitutes a legal system are purely formal, and say nothing concerning the values themselves. Particular conceptions of what is right, this position holds; are purely relative, and however deeply ingrained in our individual and social consciousnesses, have no reference whatsoever beyond the actual practices and shared understandings of particular societies, this thesis, incidentally, formed a major strand in the case advanced for the defence of the Nazi war criminals at Nuremberg. (26)

According to this view a formal science of law (27) is possible, as is a science of descriptive morality, or a science setting out the values which are in fact in force within a particular legal system or systems, whereas a science of normative ethics or of justice is not. Such a position must be carefully distinguished from the other strand of legal positivism, which insists on no more than that the law as it is, and as it ought to be, are two wholly different matters for enquiry. This latter view is entirely compatible with, and indeed is frequently the vehicle for strong, even objectivist, moral views (28); however, ethical relativism and legal positivism do frequently go together, and this association finds its paradigm expression in the works of Kelsen, specifically in his essay What is Justice?

A further dichotomy must be drawn; "objectivism", so it would appear, must not be taken as a synonym for "naturalism"; rather, the latter requires to be taken as one variety of the former. Naturalism is that category of objectivism which seeks to (definitively) identify goodness with some natural, factual quality, such as pleasure, self-sacrifice, balance of happiness over pain, or some such thing. It was the substance of Moore's thesis (29) that all such ideologies are fundamentally erroneous, by virtue of their common commission of what he termed the "naturalistic fallacy", but he remained nonetheless an objectivist, since conferring upon goodness the somewhat precarious position of being a non-natural quality, but one nonetheless existing objectively,

that is, independently of any subjective will(s) or consciousness(es).

Moore identifies the naturalistic fallacy as the attempt to define a non-natural object, such as "good", by means of a natural one. However, his usage of the crucial term "natural" is highly problematic. He defines "nature" as: "the subject matter of the natural (30) sciences and also of psychology" (31), but a moment's reflection should suffice to expose this as blatantly circular, and, therefore, less than illuminating. He continues, "It (nature) may be said to include all that has existed, does exist, or will exist in time." (32)

So, does this not amount to an acceptance that "good", since not a natural quantity, is therefore non-existent? Equally, his claim that "good" is indefinable might appear to be indistinguishable from the position that it is meaningless. In fairness, however, regard must be had to Moore's views on definition. It is not enough, apparently, in defining a word, to give an account of what is generally used to and taken as signifying. True definition consists in analysing a complex idea into its simpler elements (33), and since, according to Moore, "good" is a fundamental, simple term incapable of further division into constituents, it cannot be defined. This belief continues tacitly, even unconsciously, recognised in the usage of the term "analytical" to denote definitional truth, but otherwise it has been largely superceded, along with the more general contention that words are to be taken as referring to some object of thought, by the "use" theory of meaning, according to which a word is to be defined by the linguistic function it performs, for example, in the case of "good", evaluating. In my own view, the "use" theory is probably correct; the first view, the "nominalist" theory is not incorrect as such, but rather its defect is that it is too narrow. "Standing for" an object of thought is one use to which words may be put, but clearly there are other uses, such as the conjunction of ideas, this being the function of the word "and".

However, he goes on to qualify this account of nature on the following page. To be natural, it seems, an object (and "good" is throughout presumed to be an object, or at least a quality capable of attaching itself to objects) must be capable of existing "by itself (34) in time". (35) Perhaps the crucial factor is that non-natural qualities are not cognisable by any of the empirical senses. Those things which are good, i.e., according to Moore, which possess the quality of goodness, can only be perceived to be so, Moore tells us, by considering them in isolation. There are also those events and actions which are good in the secondary sense of being, as a matter of fact, conducive to those things which are adjudged to be good in themselves by means of the above-referred-to "thought experiment", that is, by considering them in isolation. Since these fundamental judgements are to be made in this manner, Moore has been labelled as an "intuitionist". The attendant difficulties should be obvious. Those objects which Moore claims are good in themselves are beauty and social intercourse; but what is to be the objective criterion for what constitutes beauty? (This is at least as problematic, indeed arguably more so, than the question of the criterion of what is objectively good), and, as to the latter, the recluse or the hermit would clearly not agree. And who would be referee to determine which party is correct?

I would strongly suspect that what is natural is simply what is, that is, has objective existence, so that nature and objectivity are one in the same. If this be so, then the position which I have described as "non-natural objectivism", and therefore Moore's system, would have to be rejected as incoherent or self-contradictory. It turns out, therefore, not to be a feasible position after all.

What, then, can be said in favour of Moore's identification of the "naturalistic fallacy"? Is it, indeed, a fallacy at all? Certainly, Moore's formulation bears with it the castigation of the confusion of form with content, referred to earlier, and therefore of defining a term by means of another with which it is in principle incapable of being synonymous. And secondly, naturalistic positions entail the illicit movement from factual premisses to evaluative conclusions, which is of course in violation of the principle that no factual (36) proposition, nor indeed, any number

of these in combination, alone suffice for the valid inference of a conclusion which is evaluative in structure.

But this much is less than remarkable; more than a century previously, Hume had pointed to the relative autonomy of the factual and the evaluative, and had recorded that this insight, if generally noticed,

"would subvert all the vulgar systems of morality" (37)

All in all, Moore is best considered as having heralded the final phase in the reductio ad absurdum of objectivism. For just as his contention that "good" is indefinable came close to the confession that it is meaningless, his espousal of intuitionism took him dangerously close to the conclusion that moral evaluations are ultimately groundless. This thought is expressed by Professor J.L. Mackie as follows;

the central thesis of intuitionism is one to which any objectivist view of values is in the end committed: intuitionism merely makes unpalatably plain what other forms of objectivism wrap up. (38)

This being so, what followed at Moore's heels in the field of meta-ethics can scarcely be a matter for surprise; Moore, after all, had unwittingly laid the foundations for the arising conviction that first-order moral controversy comes to no more than an opposition of subjective "intuitions", dressed up as revelations of objective truths, and such as admits of no resolution.

It was at this point in the sequence of ideas that there arose the influential school of thought, instigated by Bertrand Russell's former pupil, Ludwig Wittgenstein; this school was logical positivism (39), and held that a proposition is meaningful if and only if, firstly, it is a logically necessary truth, that is, an identity, or alternatively, it is a synthetic assertion whose veracity is capable of being tested empirically. In the field of meta-ethics, the emotivists, so-called, were swift to seize upon the corollary that value judgements, since failing this test, are to be considered neither meaningful nor significant. The truth of the matter, it was held by A.J. Ayer (40) and his followers, is that ethical utterances, whatever claims may be made

for them, do no more than express the subjective approval or distaste of the utterer. Much the same approach is applied to legal theory by the Scandinavian Realist school (notably Alf Ross), who resist all normative accounts of the nature of law, holding all normative terms such as right, duty, and so forth to be mere sham concepts. (41)

Emotivism was in its turn succeeded by prescriptivism, the most noteworthy achievement of which was the shifting of the emphasis in second-order enquiry from the allegedly attributive nature of moral utterances to the speech-act, or linguistic function, entailed in this form of evaluative discourse. (42) However, there remained unallayed the same sense of the ultimate futility of discussing the real subject-matter of ethics, the values themselves; the dream of a science, (or systematic corpus of knowledge), of normative ethics or justice seemed remote. In order that this dream be made actual, the content of morality, according to Sidgwick would have to be "an object of knowledge, and as such the same for all minds" (43).

This, then, is a statement of the problem, one which presents itself to many as the dilemma of discovering themselves to hold strong ethical views which they are ultimately unable to justify intellectually. To take a single example, I might enquire why I ought not to launch an unprovoked assault on a given individual. It might, of course, be pointed out that I would thus run the risk of equally violent retaliation; but this argument, however persuasive it might be on my conduct, is not a moral argument, it is merely a prudential one; it should be noticed that if accepted as a moral argument, it would yield the peculiar consequence that the stronger my proposed adversary, the more wrongful would be my action, while by the same argument it would be entirely permissible, should he (or she) be weak and unprotected. Alternatively, and more relevantly, it could be protested that (as a matter of fact) such action would cause my victim unnecessary suffering. I might then pose the question of why I ought not to cause unnecessary suffering (whether to my present victim, to persons, or sentient beings generally). It may then be further explained, again as a matter of fact, that such behaviour tends to reduce the aggregate of (human?) happiness, but, again, I might enquire

of the basis of this injunction, and so on, ad infinitum. It would seem, prima facie at any rate, that moral principles may be inferred logically, i.e. objectively, from more general ones (44), but only to the extent that the more general principles are presupposed; it is the ultimate moral principles themselves which are held open to doubt. What, then, is the solution, if, indeed, one exists?

It is well at this stage for me to acknowledge my debt to Professor J.L. Mackie, on whose enlightening book Ethics - Inventing Right and Wrong my own views concerning this solution are loosely based.

Professor Mackie begins by emphatically discarding naturalism; in a formidable recital of considerations tending to refute the existence of values which are simply there, as "part of the fabric of the world" (45) he cites as the chief amongst these the variability of positive moral values (46), the "metaphysical peculiarity" (47) of such a claim, the problem of conceiving how normative attributes can follow from, or be supervenient upon natural qualities, and

the corresponding epistemological difficulty of accounting for our knowledge of value entities or features and of their links with the features on which they would be consequential. (47)

These arguments, he tells us, summarise the case for the brand of moral scepticism which concedes conceptual significance to morality, while at the same time denying it a natural content.

So far, despite the clarity and authority of exposition, these conclusions are less than remarkable. What is genuinely seminal is the set of inferences which Professor Mackie goes on to draw. His starting position stands parallel to the relativism of Kelsen (48), in that both emphatically and explicitly reject the existence of values possessing absolute or self-subsistent validity, but here the two accounts dramatically diverge. According to Kelsen, it follows that nothing more can scientifically be said of Right or justice beyond the operation of a formal analysis (49), together with, by means of this formal analysis, an exposition or presentation of the values actually disclosed by particular systems of law. But, for Mackie, it is not in spite of, but precisely

because of the simple fact that nature knows of no inherent legal or moral values that such values are not given to us by some abstract, mysterious power, but have to be constructed by the men in society whose purposes they are to serve.

It is implied in this that it is erroneous to commence from a search for the "Form of the Good" (50) such as Plato depicted as an "eternal extramental reality" (51), whilst scorning to consider positive morality, this latter being conceived as a mere reflex of the ultimately real, a parasitic, pale shadow of absolute morality, and as such casting no further light on the problem. On the contrary, it is essential to commence with an understanding of the nature of conventional, positive morality, and the mode of its creation. In issuing moral utterances, one does not prescribe, but rather one subscribes to a prescription which is thereby presupposed. And it is precisely in this way that positive moral values are accorded substance, and given more or less articulate form as general social requirements. The distinction between right and wrong lies essentially not in the act itself, but in the meaning (52), or social significance with which in the wider social process it comes to be bestowed; values arise as an artifact of human invention, and as a creation of social convention. In the case of morality and customary law, this takes place directly, and in the case of legislation (whether by court or assembly), indirectly. In other words, it transpires that there is after all a middle ground between objectivity on the one hand, and mere subjective consensus, that is, coincidence of "intuitions", on the other. The essence of convention is that it operates by means of those shared understandings such as are variously occasioned by life in society. An analogy with language is helpful here; words, as immediate empirical entities, are nothing more than configurations of sounds or markings on a page, but their ability to convey thoughts and messages of various sorts results not from any natural providence, but by virtue of significances attached by means of the self-same process of shared understandings established in the course of social life. The Scandinavian Realists would do well to reflect that their contentions concerning normative propositions to the effect that these, since possessing no inherent significance, and so, they claim, no significance at all, can only be communicated by means of language, and therefore words, which clearly hold no better claim than values to objective

status. To live in society, indeed, is one in the same as being a party to shared understandings as to normative and linguistic significances.

It would appear that the creations of the normative orders and of language are purposive activities, although not entirely consciously so; in the case of the former, the quest for justice is transformed from a mission of discovery to an enquiry as to which of all possible conceptions of justice will serve its purpose best. It is in this sense that Mackie sees himself engaged in a "choice of a first order moral system" (53)

For all activities or entities postulating some purposive element yield a logically necessary criterion for their own evaluation, this depending in each case for its substance upon how the specific objects implied by the activity or entity are to be most effectively met. To extend the language analogy, the function or object of language as one such form of purposive activity is the expression and transmission of ideas, and thus we arrive at a rational criterion by means of which one language, or one linguistic usage, might be preferred to another out of something more substantial than simple personal favour. To take a rudimentary example, I have found the French "Monsieur" to afford a means of addressing a man whose name is unknown, while at the same time avoiding both excessive familiarity and obsequiousness. In this respect, the French language is superior to the English, which knows no directly equivalent term capable of fulfilling this desirable function. By this same criterion, provided by a simple consideration of what language is for, socially established linguistic usages are to be condemned, and if possible, discarded, where these militate against clarity of thought and exposition, or contain and thus afford means to the perpetuation, wilful or otherwise, of errors of thought. For example, ambiguity, the mother of equivocation, arises where quite separate objects of thought are denoted by a single term. This tendency is all the more deplorable where the two distinct ideas are sufficiently alike as to be liable to confusion; the paradigm case of this must surely be the word "law". (54) That descriptive and prescriptive laws are designated by this single word is no mere coincidence, but is rather the legacy, and indeed the germ, of the formerly

orthodox belief that the two are one (55). This view is seldom encountered in its absolute form nowadays; but it remains a fertile source of confusion. Thus, to speak of the "law of the survival of the fittest", as does Herbert Spencer (56), makes this phenomenon appear as if it possessed an intrinsic, inherent legitimacy. Again, as has been noted already, a question such as that posed in the title What is Justice? is in itself radically objectionable, in that the use of the word "is" obscures and thus confounds the division between the two quite separate functions thereof, and indeed of any verb. In all of this, particular linguistic forms fall far short of the demands of self-conscious spirit.

This, I think, is sufficient to demonstrate the principle that language can, like charismatic forms of religion, operate as a corrupt and corrupting influence, simultaneously reflecting and preserving or perpetuating false correlations of objects of thought; and the crucial point is this, that this tendency falls condemned not by any arbitrary principle but by the criterion of evaluation which the institution of language, as both a form and a manifestation of instrumental rationality gives to itself.

And precisely the same procedure applies to everything that is "for" something; the definition of the word "knife" is such as to necessitate the conclusion that a "good" knife is, inter alia, a knife that is sharp, i.e. good for cutting. That is, that a good knife is a sharp knife is part of the meaning of "knife", although sharpness is no part of the meaning of the evaluative adjective "good" in this or any other context. (There is at least one interesting corollary to this line of thought; that is that a purely formal definition, i.e. a definition which makes no reference to specific function, of a functional term - and this, as I shall attempt to establish shortly, is a category which includes law and morality - is doomed to failure. If there be any who doubt this, then I challenge him to attempt to formulate a definition, as opposed to a mere description, of "knife" without making any reference to cutting.)

Such a procedure applies not merely to "functional" (57) words such as, in the example given above, "knife", or, to take Mackie's other example, "hygrometer", but to all ideas (eg. rockclimbing) which postulate some purposive activity, or some

element of instrumental rationality, that is, will articulated as such in some determinate direction.

Suppose that I express the opinion that MacTavish is a good footballer. "Good", here, does not of course mean morally good, it merely signifies in the present context a positive evaluation of footballing skill. (This, incidentally, illustrates the relative character of the word "good". Someone or something cannot be good in his or itself, or in isolation; the evaluation must be related to some objective criterion of judgement, that is, it must be good at or for some thing or purpose.) Suppose now that a critic asks me to justify this evaluation. I point out that MacTavish shoots strongly and accurately, runs quickly in possession of the ball, and that opponents find it most difficult to dispossess him. My critic goes on to protest that these are factual, descriptive qualities, and as such they cannot infer or entail by themselves a favourable or indeed any evaluation at all. But this is misconceived, for I do not contend that "goodness" is a quality naturally inhering in or supervenient upon his ability as a player; it is simply that, given the object of the game, these are among the qualities which it makes sense to commend. In this light, it would not be logical to commend such unfavourable qualities as lack of physical fitness, nor for that matter, a neutral one (in this context) such as intellect.

This self-same procedure can, if these are indeed the creatures of human rationality, be extended to the systems of values governing human conduct; law and morality. Towards this end, I shall in the following chapter give consideration to the object of subordinating human conduct to rules of law and morality, an enquiry which can only be made by means of the Hobbesian approach of enquiring as to how we would fare if no such institutions had been devised. (A consideration of Hobbes's ideas in this context forms the central theme of chapter 2, and therefore the details of the question of what function societal (i.e. legal and moral) values possess shall be resumed in that context; for present purposes, it will suffice to emphasize that it is upon the function or object of these systems of values that the argument turns, and not upon the object of life or any such notion, nor directly upon any immediate objects which particular persons may hold.)

For the present, it is contended that, while substance is no part of definition as such, the nature of a normative order as an instrument and medium of rational will gives rise to a certain, relatively determinate content, standing apart from, but in a condition of secondary or indirect entailment to form. This content, as values evaluated, arises not out of the activity alone, but out of the activity together with the necessary criterion of judgement with which it bestows itself. The revelation that the province of normativity is not after all the creature of nature, as the category of pure being, but of Reason, is indeed an exhilarating one, dismal only to those who aspire to no higher destiny for mankind than an eternity of darkness and idolatry. (58) The conclusion that moral values are intersubjective, is not, after all, an embarrassing one.

(iii) The Fundamental Judgement of Value

"and thou hast tried them which say they are apostles, and are not, and hast found them liars " (59)

It should be clear from the foregoing that what is required to attain the reconciliation of form to substance in the context of Right, that is, the totality of absolute values conceived of and comprehended as a systematic unity, is a fundamental value judgement, to perform the role of a substantive groundnorm. (60) We are called upon to select a foundation for our morality, and as to what is the correct choice, this is predestined by the nature of Right, as it shall in the course of this essay, it is to be hoped, progressively reveal itself. This nature, at any rate, places constraints on what values can rationally be chosen, and what cannot. We are here engaged in evaluating the various possible conceptions of Right, each of which is determined and identified by its characteristic substantive groundnorm, in precisely the same fashion as the pedigree or character of a normative order, as being legal, moral or religious, is established by reference to its formal groundnorm.

It must be asserted that social, that is, positive, morality is an aggregate not additional to nor apart from the

particular moral codes, i.e. conceptions, espoused by the various members of a society. In every value judgement I express, I contribute to, reinforce, extend or contradict (and hence in part seek to change) the prevailing values of society. The opinion that the unearthing of the norms of the absolute, the ideal, system is an undertaking so problematic that the best we can do is to acquiesce in whatever happens to be the prevalent values accepted in our own society can thus be seen to be utterly erroneous. Morality has no source external to ourselves, so that wilful blindness simply degenerates into a bizarre and unreflective game of follow-my-leader, to a destiny unknown. Hence, the vital significance of the right of private judgement asserted by the Protestant Reformation (61); as we are the fabricators of morality so too must we be its architects.

Kant, on this matter, is both lucid and inspiring, for he places upon moral agents not merely the obligation of simple obedience to the rules of law and social custom, but also to the duty ^{to} ~~to~~ ^{critically} evaluate these; the rational moral agent, then, is called upon to do more than simply follow the positive social norms, by which he finds himself confronted. It is in this sense that Singer asserts (62) that a merely customary morality, even when not based on the will of a despot, is deficient, and falls short of the ideal of rational freedom, since amounting to no more than dependence on external social forces. In the Kantian system, the moral law is to be determined as the content which the pure moral, or rational, will accords to itself, in isolation from all extrinsic considerations such as personal inclination or purported moral authority. (63) Nowhere is this more clearly in evidence than in Kant's Principle of Autonomy (64), which is one of the alternative formulations of the Categorical Imperative. (65)

One must, then, strive to attain a single fabric of rationality, by means of the transvaluation of the values with which all are confronted from without (66); it is, beyond question, the gravest tragedy of the human condition and history that the great mass of people are content to acquiesce, without reflection, in those existing beliefs and values which are prevalent in their own societies. Hegel's analysis is sound when he writes;

The unsophisticated heart takes the simple line of adhering with trustful conviction to what is publicly accepted as true and then building on this firm foundation its conduct and its position in life. (67)

Arising by the power of the negative, we have the emphatic rejection of blind acceptance and faith in purported external authority;

It is a sheer obstinacy, the obstinacy which does honour to mankind, to refuse to recognise in conviction anything not ratified by thought. This obstinacy is the characteristic of our own epoch, besides being the principle peculiar to Protestantism. (68)

However, in the very same passage, Hegel - or so, at first glimpse, it would appear - betrays the spirit of the Reformation, and with it the basis of moral autonomy when he represents the transvaluation of values as a mere "vanity and particularity of opinions and things". (69)

It is certainly true that in Hegel's system, in particular with regard to his historicism (70), progress by means of the vision of the aggregate of those single individuals that are able in imagination to transcend the limitations of their own immediate condition is viewed with scepticism (71); in one celebrated passage he writes that;

It is just as absurd to fancy that a philosophy can transcend its contemporary world as it is to fancy that an individual can overleap his own age, jump over Rhodes. (72)

However, once one rejects Hegel's historicism and with it the implicit view as to the inevitability of progress, it certainly seems that moral autonomy is one of the few hopes for moral advance, and that conscience, as the capacity for the critical transvaluation of prevailing positive values, is the only inalienable right, since it is simultaneously our highest obligation entailed in the nature of Right as the vehicle of conscious volition. This, the appeal to and demand of direct experience; is surely the essence of that

simple message made sacred by the blood of the Protestant (73) martyrs; the pretension of those who claim to be the exclusive fonts of esoterically revealed moral truths reveals itself in the last analysis as no more nor less than the final refuge of error and deception. (74)

Certainly, it is in part the solution to the contradiction involved in Hegel's seemingly ambiguous stance in relation to moral freedom that whilst Hegel was unimpressed by moral freedom as a means to the attainment of the ideal social order, it remained none-the-less an essential element in his conception of the ideal, once attained by other means. There is more to the solution, however, than this. It is to the nature of Hegel's own solution that I now turn my attentions.

It is in the very nature of moral evaluations as subscriptions to, and not merely as descriptions of presupposed prescriptions that these are frequently framed with reference to an ideal - or imputedly so - ordering of relations. It is this mode of appeal to transcendent values, detached from the actual practice of one's own society, which Hegel rejects (75) as an alienation, an estrangement from true community, and as opposed to the need for an ethic which is "universally accepted and valid". (76)

And certainly, a small amount of reflection is sufficient to reveal that moral autonomy, however vitally important it might be, cannot in itself be the whole story. For, taken by itself, moral freedom proves to be a less than adequate basis for human society, since it dissolves itself into a radical subjectivism, which opposes itself to societal rules (in the sense of universally accepted patterns of conduct) and to social cohesion in any form. (77)

Nor does the individual conscience trapped in an irrational world fare happily, since having no other recourse than a melancholy withdrawal from an external, brute reality of which it feels itself to be no part;

In the face of the demands of the State for outward conformity, freedom can only be found by retreating into oneself (78)

and by "taking refuge in a philosophy" (78) which stresses the unimportance of the external world.

It is to this felt inadequacy which Hegel's seemingly ambiguous, indeed contradictory, attitude to moral autonomy can be traced. It can now perhaps be perceived that Hegel's essential strand of thought is much more complex than a simple preference of one conflicting element, moral freedom or customary harmony, one against the other, or even than a mode of compromise as between the two. Rather, he sought a more intricate arrangement which would successfully embody and reconcile both of these opposing formulations. (79)

What Hegel had in mind was a mode of social life which united the demands of the individual conscience with the spontaneous, customary community of Ancient Greece; this would be attained when the entirety of the social process came to be rationally organised, and all individuals freely chose to participate in it, since recognising in it the application and realisation of principles of universal reason. (80) This condition of things, which unites both subjective and objective freedom (81) is the state of rational freedom, and was considered by Hegel to be the goal of human history. (82) In the light of my earlier misgivings concerning the inevitability of progress however, there remains the difficulty of how freedom on the objective level is to be attained in the first place, if not by means of moral autonomy, in alliance with conscious (and probably violent) action.

The fundamental judgement of value, from which all absolute values flow, is the criterion by which all social rules and institutions stand to be evaluated and adjudged to be rational or irrational; as such, it is intimately related to the function which Right as a functional device discloses. Since chapter 2 is concerned chiefly with the discovery of this function, it is to be hoped that all these related matters shall become clearer in that context also. For now, it is sufficient to note that the nature of Right as a functional device is in itself sufficient to locate the criterion somewhere within the province of will, that is, the satisfaction of the requirements of sentient beings. By this alone societal values come to have imposed upon them the general constraint of conformity to what can be concluded to be located at some point

within the sphere of sentient design. The question, at the most general, fundamental level, becomes this; what conduct does it make sense to prescribe, and what conduct does it make sense to proscribe? It is a futile and meaningless exercise to forbid behaviour which is harmless (or even beneficial), or to require conduct which is entirely unattended by advantage (or even harmful). A man's desire to continue in life is not what makes his right to do so, but if men did not wish to go on living, and if nobody derived any benefit from the lives of others, there would be no conceivable merit in according men this right. Similarly, the fact that people on occasions may wish to die, at least raises the possibility of the right to die, or to take one's own life. In the most general terms, then, morality must be taken as operating on the side of the advancement of the human condition, and as militating against unnecessary suffering and pain; this assertion is specifically

the proposition that only the concerns of conscious, sentient beings have the moral significance to serve as the ends of a rule-governed order (83)

Of course, this thesis that absolute values operate on the side of human "interests" must be taken only as a very general formulation, to which a considerable number of gaps will require to be filled in. Certainly, in its raw state, it is open to a battery of objections.

To begin with, it may be asked whether all interests are equally significant. Certainly, that they are so may appear to be the view of the utilitarians; however, socialists generally grade preferences or interests according to whether they are "social, non-social (or) antisocial" (84) in orientation, and certainly, since Right is a device which aims at social cohesion (a theme which shall be elaborated upon in chapter 2), it is clear that interests of the first (or, at the least, the second sort), possess the greater moral significance, whilst interests of the third sort may possess none at all.

Secondly, the connection between Right and the advancement of human interests might be claimed to be radically misconceived, in that the application of rules characteristically comes into

play in situations in which human interests are opposed. But I do not mean to imply that such particular dispute situations should always be settled according to the dictates of human interests - for if such a resolution was always possible, morality and law would be superfluous - nor even that such particular interests should be adjudicated by a simple counterbalancing of opposing interests one against the other, so as to produce the greatest net satisfaction. What is however closer to what I do mean to say is that such situations should be determined according to universal, general norms of conduct which should themselves be chosen as possessing consequences which most clearly accord with sentient designs generally. It is of course commonplace that duty and inclination frequently diverge; in all this, it can be seen that the relationship of Right and will is a complex one.(85) That relationship is none-the-less an essential one, and its clarification will be one of the chief tasks for chapter 2. One further explanation is necessary; as will later be demonstrated in detail, it is to a very considerable extent the province of Right not to discover and provide for the particular concerns of specific natural persons, but to maintain the condition in which those individuals are substantively free to pursue those concerns for themselves.

These objections left to one side for the present, we come to perceive the seeming paradox that from the moment we abandon the illusion of objectivism in ethics in favour of a "functional device" theory in which the nature of the function gives rise to a fundamental value judgement in the form of the necessary criterion of evaluation which the activity of creating norms of conduct gives to itself, we are, as with all deduction, embarked upon the path to a logically determinate conclusion which is independent of all subjective considerations. It also transpires from this abandonment that the solution to the problem is nevertheless objective, in the secondary sense that it is the same for all minds (86); despite, or rather because of the conclusion that norms of conduct have no independent foundation but are contingent upon human reason, the question of the ideal substance of these norms is such as admits of an objectively determinate answer. Thus, this answer is such that even one unconcerned for the fate

of humanity must by force of reason, in the absence of error, be compelled to acknowledge it, although of course such a person would be indifferent to whether or not this ideal substance be realised.

Thus, the division of naturalism against positivism is revealed as being less than absolutely authentic (87), and the essential unity of these is directly perceived. The characteristic paradox of the present work is precisely that out of the rejection of the existence of objective, that is, natural, values, we are afforded a means to the objective determination of Right in its highest form, that is, in its fullest condition of conceptual development and in synthesis with the content which it gives to itself. It is solely in virtue of this conclusion that we are enabled to perceive the prospect of a science of ethics, where a "science" is defined as a systematic corpus of knowledge concerning an entity, (or entities), which is in principle capable of becoming an object of thought or contemplation.

(iv) Deontology versus Consequentialism.

There must now be resolved a further question, one relating essentially to the formal structure of the ethical order. It is a question of fundamental importance to political science, and in particular to the various moral and juristic problems raised by the ideology of socialism. (88) The question is this; are we to evaluate human conduct according to a deontological or a consequentialist conception?

The former of these categories conceives of the ethical order as consisting structurally in a logical hierarchy of values, that is, principles and rules which are universal in obligation and general in application; and, since such means-orientated, non-teleological accounts (an example of these being Robert Nozick's Anarchy, State and Utopia (89)) are, as such, generally successful in eliminating occasions for different principles to come into mutual conflict, there is the tendency, or at any rate the opportunity for such conceptions to be absolutist. Further, since pure forms of deontology (again, Nozick's book affords a fine example) treat certain sorts of behaviour as good or bad in

themselves, such conceptions are inescapably naturalistic, since excluding therefore the prospect of morality as an instrument or mode of conscious design; instrumental rationality, after all, presupposes a telos. Compliance or non-compliance with an order of pre-conceived rules is seen by this view as the sole criterion for moral evaluation, and the convenience or otherwise of the consequences for the actor or for anyone else, is considered morally irrelevant. To this, there are two aspects. On the one hand, there is entailed the conclusion that violation of the rules stands condemned, and cannot be justified nor even mitigated merely by reference to agreeable consequences flowing from such an action, nor even to necessity. (The implications of this view, as we shall see in chapter 3, for taxation and the legitimacy thereof are clear). Conversely, the direct consequences, though they be fully foreseen, or even intended, are not incompatible with morally permissible action, so long as no violation of the rules occurs. This category is known to the law of Scotland as damnum sine iniuria (90), and the paradigm instance of it is loss, even ruination, inflicted by means of trade competition.

Consequentialism, however, is directly teleological, and evaluates conduct according to its tendency to promote or to frustrate a given end, or ends. (91) This simpler form dispenses entirely with the elaborate structure of constraints associated with deontological conceptions, and finds itself in opposition to rights, for example, property entitlements, as mere obstacles to the favoured goal. Probably the paradigm form of this latter category is act utilitarianism, which principle directs us to pursue the greatest happiness of the greatest number. This facet of consequentialism is the best illustration of the propensity of deontology to dispense with the moral appraisal of ends, and to provide a means - directed structure within which moral agents are left at liberty to pursue their own independent aims, and in which they are constrained only by the reciprocal rights of others. This sort of view, as proposed by Hayek (92), has the definite merit that it renders entirely redundant all the difficulties concerning what sorts of things are good or bad in themselves (93), that is, what are to be the consequences and sorts of interests of which our moral order is to take account. The question of what

sorts of entities are desirable in themselves is a nonsense; in our enquiry as to what is objectively desirable, we are thrown back upon the form of will, that is, ethical freedom.

The question which I now wish to pose is this; can this division between these two categories be sustained absolutely? To begin with, a consequentialist conception remains none-the-less deontological in the limited sense that it retains a single rule in the place of the discarded system of rules, as opposed to dispensing with rules entirely. And, to approach the division from the opposite direction, internal reference to known or probable consequences will form a necessary part of the substance of the deontological conception, since it is in the nature of rules that they apply to the conduct of at least partially rational beings who have some perception of the likely results of their action. Rules are concerned with behaviour, and behaviour consists not merely in action, but in action which encompasses some definite goal or goals.

Even the resort to consequences alone would have to be restricted to those which are known or reasonably foreseeable; after all, one otherwise wholly discards the mental aspect, and indeed the whole foundation of moral agency. Under a view which graded conduct solely and purely according to actual consequences, attempted murder, insofar as it fails entirely, would have to be accounted entirely innocuous, and the man who encompasses the death of another, but like MacBeth resembles in his irresolution "the poor cat i' the adage" who let " 'I dare not' wait upon 'I would' ", (94) would have to be considered ethically interchangeable with the man who entertains no such desire. Conversely, actions having the most appalling consequences may frequently involve neither foresight nor intention. And in any event, whether one considers oneself an adherent of the deontological position or not, consequentialism even in this restricted sense of moral evaluation proceeding according to consequences directly and intentionally flowing from particular actions, appears to be radically incoherent; the contradiction lies in the fact that participation in a system of socially established rules can operate to the most beneficial of consequences, while a general pursuit of diverse aims, each of which

by itself is on balance favourable is directly self-defeating. (95) Consideration, after all, must be given by the pure rational will not merely to the consequences of particular actions, but also to the consequences of actions of that type being generally followed, and, indeed, to the consequences of the operation of a system of rules. In other words, the ideal legislator, or moral agent operating under the principle of moral autonomy, must have regard not simply to a specific action, but to that action generalised into a maxim of personal conduct, and universalised into a rule of conduct applicable to all. This should be made reasonably clear by means of recourse to a single example. If one confines the scope of one's deliberations to the direct consequences of particular actions, one might be led to condone the taking of an article from its producer, in order to confer it upon some other who can derive a greater satisfaction from it. However, even if one adopts the telos here implied, the derivation of the maximum satisfaction from material objects, it must be recognised that if such conduct forms a general pattern, the most disastrous consequences, when viewed from the wider perspective, will ensue. (96) For people would generally be deterred, for want of secure possession, from producing objects of economic value, that is, which are desired as useful, since running the risk of summary confiscation. As one application of the "goose that laid the golden eggs" syndrome, the attempt, or rather, the general pattern of isolated attempts to increase the total satisfaction from available resources would fail as directly counter-productive, in that the actual outcome would be the direct opposite of that which was intended; out of the attempt to enhance the aggregate enjoyment of physical resources, this aggregate would in fact be drastically curtailed. Right, it would therefore appear, is not the substance but rather a higher phase of the articulation of will; the objects of this functional device are not particular objectives (ie. desired consequences) generally, but rather these former relate to the maintenance of conditions in which these latter can effectively be pursued.

However, the pure deontological position presents itself as no less problematic. For it apparently holds out an autonomous, self-contained order of rational (rational, that is, in the sense of conforming to a principle of formal systematic unity) precepts having no necessary connection with human designs. Accordingly, the self-

subsistent values of the pure deontological order appear as ends in themselves, and therefore as being simply there in the nature of things; it was in this sense that I earlier remarked on the close relationship of pure deontology to naturalism. (97) This aspect is most clearly in evidence in the writings of Immanuel Kant, who with a negligence which is quite remarkable confuses the common interest with self or sectional interest (98) and thus holds justice to be an entity having no necessary point of contact with the satisfaction of the human will. It must however be observed that pure consequentialism in its own way eliminates all question of the objects of, or benefits to be derived from a system of socially established norms, and thus tends also to naturalism, in that it requires to vindicate one sort of immediate consequence as being intrinsically superior to all others.

Indeed, one is drawn to conclude that the truth must lie in some form of reconciliation of these apparent alternatives, since neither taken as the concluded truth is wholly acceptable. And further reflection tends to confirm that each is a component, in itself devoid of significance, of a higher organic unity upon which it completely depends for the resolution of its one-sidedness. (99) As I have argued already, the institution of general, universal, socially established norms of conduct (which are necessarily deontological in form) can be demonstrated to be clearly desirable from the viewpoint of utility, or indeed of any other consequentialist goal that could sensibly be proposed.

Further, it seems less than probable that the arch-deontologist Kant could have held by the test of the categorical imperative (100), that it is permissible to act without regard to the consequences of one's actions; after all, in so acting, a man could scarcely be imagined to be acting in accordance with good will in any recognised sense, nor, indeed, according to any principle at all. It is difficult to imagine a rule which would bear no internal reference to direct consequences; from "Thou Shalt Not Kill" (101), it must obviously follow that one must not engage in conduct having the immediate consequence of causing another's demise, such as by planting a dagger between the ribs. Consider in this light the Courts of Law, which in assessing delictual liability in Scotland apply the standard of the reasonable and prudent man having regard to the probable and

forseeable consequences of his actions, (102) and themselves follow much the same code, in considering the consequences for the future of each decision made by them. Thus, in Walker v Whitwell (103), they concerned themselves not simply with present justice between the parties but held to be invalid a will that had not been attested by one of the two requisite witnesses until after the death of the testator, in view of the adverse implications of a contrary precedent for subsequent cases. (104) This clearly illustrates that a framework of rules has no necessary incompatibility with consequentialist considerations, although at first sight the two confront one another as logical opposites.

For deontology, it is argued that it is impossible for an individual to fully assess for himself the full calculus of consequences flowing from his actions. But rules have no further foundation than the aggregate accumulated wisdom of mankind. Rules are essential, indeed, it might be argued, definitionally so, to social life, but come to be imagined to have some other basis, and as such, come to be followed blindly. In the end, rules can only be evaluated by reference to the consequences that they guard against, or promote. Rules are not good in themselves simply because they are rules, nor even because they can be universalised without contradiction; deontological considerations in themselves leave it an open question what content universal general rules should have conferred upon them.

Both of these elements, then, are opposites, yet neither is capable of coherent self-sustenance, and indeed each has an inherent tendency to reveal itself as an extension of the other. Any intelligible understanding must of necessity embrace a synthesis or resolution of the opposition here described. Deontology represents, as we have seen, the category of reason, at any rate in the one-sided sense of systematic coherence whilst consequentialism is representative of the antithesis, that is, the opposing and by no means more finally authentic pole of the same concept. Right, as being in itself inherently rational, of necessity embraces both these poles (105), so that any conception which treats them as absolute opposites cannot be sustained. Accordingly, the process of synthesis in which each abstraction, and therefore the opposition itself, is superceded and thereby resolved, is by no means a compromise, nor an admixture of heterogeneous elements, but on the contrary entails the emergence of a single, pure, conceptual whole.

(v) The Dialectical Methodology

An explanation for the dialectical methodology which I have employed in the preceding sections, and which is fundamental to this essay as a whole, must now be given.

In its original Greek form (106), and in the present essay, the dialectical principle of development appears as the primary means of conceptual analysis. As indicated by its Socratic roots, it is by no means peculiarly socialist, and indeed I shall attempt to demonstrate that it has, in the hands of socialist theorists, been both ill-used and brought into unmerited disrepute. Stalin, for example, degraded it to the "philosophical" basis for what Orwell was later to stigmatise as "doublethink" (107), and as such an instrument for pretending that a state of affairs is not as it truly is, but its direct opposite. (108)

Accordingly, the dialectic is a procedure which goes beyond merely formal reasoning, which can do no more than proceed from concepts as given. (109) (However, as shall shortly be demonstrated, formal logic does have a role to play within dialectical or substantive reasoning). It is one of the central contentions of this essay that since jurisprudence is largely preoccupied with the analysis of legal concepts, dialectical forms of argument hold a vital function in that science. In particular, the dialectic as here presented is intimately connected with the earlier passages on the necessary criterion for the evaluation of values, which theoretical device seeks to transcend the formal logic which in that context proves impotent. It is characteristic of my whole enquiry that I seek analytical ties beyond mere synonymy.

The dialectical approach gives rise to a hierarchy of conceptions commencing with the simplest, most immediately accessible understanding of the concept under scrutiny, which insofar as it is conceptually inadequate as it stands, gives rise to a theoretical impasse or contradiction, which can be resolved only by means of a synthesis. Synthesis is the movement in which a contradiction is overcome and yet at the same time preserved. This resolution or reconciliation of the two sides of the contradiction - the thesis and the antithesis (110) - is made possible by the fact that it is not merely the thesis and the antithesis which are revealed to be less than wholly authentic, but so also is the contradiction itself, since

it arises only at a level of comprehension which is imperfect and misconceived. The synthesis demonstrates that the contradiction has been illusory from the beginning. This facet is most amply illustrated in what is, in Hegel's system, the highest synthesis; the attainment by Spirit of self-awareness through the recognition, in the "external" world, of itself in objectified form. The contradiction between subject and object is, in this movement, resolved through being demonstrated to have been false all along.

Inadequate conceptions assume the form of abstractions, that is, conflicting pairs of one-sided understandings in which the concept is presented not as it is in itself - that is, as the Idea, the absolute, which is the goal of conceptual analysis - but as it appears from one particular direction or the other. The identity or interpenetration of opposites (111) is not however a fixed, absolute law, and it is certainly not to be taken as implying, for example, that the Idea of justice is one and the same as the Idea of injustice, nor that the idea of X = the Idea of not-X. It is to be taken simply as signifying that along the route to the Idea, (eg., as in the present essay, the Idea of justice), there are encountered various (ultimately illusory), oppositions which tend to collapse on closer inspection, this abrogation being symptomatic of the logical inadequacy of both abstractions, and of the supposedly absolute opposition between them.

Formal logic serves to identify these contradictions or negations, and at the same time formal systematic coherence is the unifying principle of the conception. Each conception is developed by means of formal inference (112), and falls to be discarded when by means of this process there is brought to light an inherent inconsistency. Thus, in Kant's writings, the dialectic was employed to demonstrate that certain concepts, or our understandings, ie. conceptions, thereof, were inauthentic, since self-contradictory. (113) The synthesis, as we have seen, is the higher conception which overcomes the opposition, but its appearance may serve only as the precondition for it proving to be one-sided or inadequate in some further sense, and thus giving rise to a new negation and synthesis. This process determines both a fixed succession of conceptions, and also the Idea, the highest, the perfect understanding, which corresponds to the object of contemplation as it is in and for itself,

and which is, together with the progressive phases of its being, logically and precisely determinate. In the context of the Idea of justice, these considerations tend against that simple relativism, earlier discussed which seeks to infer from the heteronomy of moral ideas held by men the relativity of moral concepts, in that it shall be the fundamental objective of the succeeding chapters to demonstrate the manner in which all such ideologies can be precisely located within the structure of a logical hierarchy, whose successive phases and summit can be logically, that is, objectively, established. (114) In other words, I advance a conception of essence which transcends the rudimentary approach of seeking out a lowest common denominator, or a set of common, indispensable features. (115)

In passing, it is also necessary for me to explain the points of departure taken by my use of dialectics from the formulations of Hegel, Marx (116) and Engels. To deal with Hegel first, his absolute idealism (117) placed a far greater emphasis upon the interconnection of Ideas than will be found here, and thus upon the Idea of Ideas and the nature of the ultimate reality, that is, of objects in general. (118) Hegel's ambitious objective, it will readily be appreciated, far exceeds the scope of this present essay; I concern myself only with an analysis and presentation of particular Ideas, (mainly justice) and as such I deal with the logical interconnection of Ideas only peripherally, although some remarks shall be made on the wider metaphysical question here and there in the succeeding chapters. Further, while the dialectic is treated here as limited to the realm of conceptual necessity and interconnection, Hegel obscured the distinction between conceptual, ie. logical, and causal necessity (119) and in the hands of Marx, the dialectic becomes essentially a tool for the analysis of real movement, and as such, a causal theory. (120) Thus, for Marx, contradictions and the rest are to be located and found at work in social forms themselves, rather than in their attendant ideologies.

After the death of Marx, Engels constructed an elaborate metaphysic in which the dialectic was presented as the basis of the principle of real movement applicable not only to society, but to nature writ large. (121) However, the precise relationship of the dialectic to matter, which Engels took to be the true foundation of reality, and the question of how the triadic dialectal syllogism of

thesis, antithesis, (these two being paralleled, Engels claimed unconvincingly, by action and reaction) and synthesis can be applied to opposing movements in nature - e.g., to the resolution of forces, such as is expounded in any elementary natural philosophy text-book, or even to the Darwinian theory of evolution which Engels so greatly admired (122) - have never been made clear.

(vi) The Dualistic Approach to the Idea of Justice.

To return to the main strand of the argument; we are led, by the synthesis with which section (iv) was concluded, to a vision of a deontological system of first order precepts, accompanied by a second order telos, giving rise to criteria for the evaluation of these precepts. That is, deontology is the province and form of the first order system, while consequentialism operates at the level of the evaluation of values, and is the concern of the ideal legislator, or rational moral agent in his capacity as such. This, in fact, is the synthesis encompassed by rule (as opposed to act) utilitarianism (123); however, the telos which is determined by the nature of Right as a functional device may turn out, in chapter 2, to be somewhat more narrow than the broad concept of utility. That is, in common with all functional devices, its function is specific, and not concerned merely with purposes generally; it is this generality which utilitarianism implies. Nonetheless, the insistence upon the consequentialist element reveals itself to be one in the same as the assertion that Right is a form of instrumental rationality and as such confirms Right in its analytical relationship with the Idea of will. (In advance, it might be conjectured that the so-called fundamental rights, i.e. natural rights, human rights and so forth (124) are those which refer directly to the criteria by means of which positive values are to be evaluated, and indeed determined.)

It is of course consequent upon the transvaluation of values that certain rules and systems of rules are revealed to be of a merely relative validity; since opposed to the necessary form and nature of Right and the criteria for the critical appraisal of values determined thereby. It should also be observed that my usage of "first order" and "second order" in no way diverges from this context to that in

which it was last used, for, as I have already sought to demonstrate, the object of morality and the necessary criterion for the evaluation of values springing therefrom are actually entailed by the ontological conclusions concerning the nature and conceptual significance of the governance of human conduct by means of abstract rules.

Applying these principles, it would seem that a properly formulated and developed socialist ideology - and indeed the same holds for any purportedly "progressive" system of ideas - would encompass a dualistic conception of entitlement, corresponding to descriptions of and subscriptions to conceptions of Right, whether actual or possible. (The reason for my qualification relating to ideologies which are "properly formulated and developed" is that I am not here concerned merely with ideologies and thoughts such as are confined to subjective consciousness, and as such are possibly incomplete or self-contradictory, but only with the concrete Ideas therein contained such that they furnish themselves with objective reality, and thus, by the general power of logic, raise themselves above, and become independent of, consciousness in any form. (125)) If this were not so, that is, if socialism did not contain as an essential postulate an Ideal order beyond the actual rules and values in force within a given society, or at the very least, some principle by means of which relative entitlements generally can be assessed, then the statement that, for example, 7% of the population owns 84% of the wealth, far from being an objection, would simply be self-justifying. Similarly, the proposition that "all men are equal" when uttered in condemnation of prevailing inequality is coherent only when taken as referring to the postulated Ideal order, and as such, as expressed in full perception of the dual nature of reality upon which dialectical forms of reasoning are predicated.

If the specific nature of the social bond is identified with the dominant normative ideology, (dominant, that is, in the sense that it is actually followed, under sanction or otherwise), it is tautologous that any particular society is just by its own standards, and that any alternative mode of social organisation is in greater or lesser measure unjust. Since the evaluation of competing social forms is identical with the evaluation of competing conceptions of Right, there is required a standard of evaluation which is

ulterior in reference to any specific society, but relates rather to the Idea of society, that is, society in its absolute sense.

The dualistic conception of entitlement, corresponding to law as it is, and as it ought to be, is to be found in the positivist analysis of law, which is typified in Bentham's dichotomy of expository and censorial jurisprudence. (126) In the present essay, however, my treatment of the division owes more to the idealist dichotomy of appearance and reality, relative and absolute or an sich and fur sich (127).

Accordingly, a man's utilisation of, and intrusions with, an object may, within and in terms of a given positive order, be justified by reference to his property right in it, but that property right, or rather the general norm on which it is based, may itself be called into question, as conforming or not to the Ideal. Equally, the privileges of a monarch or of aristocracy can be justified within the order, in terms of status. But this status is far from being valid in itself and self-justifying; this process of relative vindication in no sense establishes the absolute justification of the value or the order. However, it must be recognised that the dualism proposed in this chapter, far from postulating a pre-existing higher order of being, begins by recognising that all values are man-made, and therefore serve not gods, nor are ends in themselves, but rather they serve the creatures of the earth. The Ideal order, as we have seen, is quite simply that conception of Right which exactly satisfies the criterion of evaluation which Right as a functional device gives to itself.

The cornerstone of the Kantian system of moral philosophy is the idealist contention that there can be but one logically consistent version of reality, and that therefore there can be but one authentic system of universal values. (Unlike Kant, who was a relativist in matters of epistemology, the anti-empiricist Hegel applied this methodology to knowledge generally; thus, according to Hegel's account, real reality is cognisable not to the senses, but by means of pure, or a priori reasoning (128)). Hence, the conception of the normative order adhered to by Kant and his follower Nozick is essentially static and monistic. This monistic approach manifests itself in two aspects; firstly, in that it denies the autonomy inter se of law and morality, and contends

that the purported proposition of each depends for its validity, indeed for its normativity, upon its conformity with what is put forward as "the law of nature". (Monism receives another, entirely different, impetus from those thinkers such as Kelsen who contend that there is no ideal system of values beyond the values of the positive order in any given society, so that this is the only level of existence of values cognisable to human reason. Hegel has been associated with this ethical relativism, not because he contends that there is no ideal system of values, but because he holds that no individual can overleap his own age, nor the stage to which Reason has developed in his own time, and that therefore the Ideal though far from illusory cannot for the present be directly comprehended (129)). Secondly, it manifests itself in the representation of justice not as the evaluation of positive values, but simply as the direct and immediate evaluation of persons, actions and events; that norm which cannot be subsumed under justice, or what, according to this view, is the same thing, the "law of nature", is not a value at all, rather it is a brute command, error or deception. From this analysis it follows that the positive law is properly conceived of not as a normative order at all, but as a factual activity, at best enforcing and declaratory of the natural law; it follows that the orthodox view that the positive law is itself analysable into rights and duties is an ideological fiction, the entirety of our rights and obligations being conceived of as being already contained in the immutable, eternal, "law of nature".

At the other end of the political spectrum from Nozick's emphatic defence of private property (130), certain socialists appear to adopt a comparable approach, retaining to their own accounts a monopoly of normative terminology, while referring to the expression and application of rival systems in purely descriptive terms. Thus, in many cases socialist writings wholly fail, or refuse, to differentiate the normative concept of ownership from brute, factual possession. (131) In many instances this can undoubtedly be attributed to a poverty of conceptual analysis, while in more mature renditions, it is more probably due to the writer espousing a fully considered refusal to represent the organised concentration of the means of production, and more

specifically the resources of nature in the hands of the few as other than brute fact. (132) However, it should be clear from the foregoing that there is no logical contradiction involved in referring to a norm or conception of Right, without simultaneously endorsing it.

It would appear plausible to attribute a dualistic viewpoint to Marx, certainly if one acknowledges as authentic the dichotomy to which Husami (135) draws attention as between Marx's sociology of morals on the one hand, and his theory or conception of distributive justice on the other. The dichotomy corresponds to Marx's identification of the various pre-socialist systems, each one pertaining to a specific phase of social and economic development, of which it represents the juridical expression, and on the other hand, to his evaluations of these orders. According to this view, therefore, far from there being but one possible system of values, each successive mode of social organisation begets its own characteristic moral and legal ideology. Thus, from the point of view of any ideological form, and of those persons who operate within it, conceiving of it as the sole authentic form, its evaluation appears as a contradiction in terms, and its supersession as expropriation. It was in this spirit that Martin Luther denounced the emancipation of the serfs as being;

"against the Gospels and robbery." (134)

Similarly, when the heritable jurisdictions in Scotland were abolished, in 1747, substantial compensation was exacted for those who were thus deprived of the profits of the administration of justice (135); the old law was even in its abrogation confirmed. And when in 1868 the Russian serfs were emancipated, they were made to pay for their freedom. (136) In the present age, although it is the purpose of recent land tenure legislation to eliminate the essentially feudal "feu duty", again this can be effected only by means of payment to the displaced "superior" (137).

However, at second glance, the dichotomy of Kant's static, monistic conception of Right, on the one hand, and on the other, the dynamic principle espoused by Hegel and Marx is not an absolute one; the Ideal system of norms is that which can be concluded to be in a condition of full conceptual development, devoid of internal contradictions. Particularly with Hegel, who claimed that conceptual

development is paralleled in its stages by historical development, the similarities with Kant become obvious; the historically emergent juridical order is that to which society is by the force of Reason drawn. It might then be truly said that there is but one conception, or Idea, of Right, and that all systems rival to it are misconceptions, since all in greater or lesser measure embrace error, in the form of logical inconsistency. It is on the stage of World History that each successive conception "by deed, instead of by argument" (138)

is fully worked out, so that its implications and therefore also the contradictions latent within it are rendered explicit (139). The resolution of the opposition between monism and dualism as here expounded, is, incidentally, such as to give rise to the suspicion that only in a society which is classless, that is, one in which there are no separate categories of persons who by reason of their condition as such hold radically conflicting interests, can there be a single universally accepted system of values; competing classes imply contending conceptions of Right. Society is properly ordered, and therefore on its own terms actual, only when its values acquire a genuine universality, expressive of the vital concerns of all rather than of antagonistic sectional interests. Conversely, a social structure, even where not inconsistent with considerable inequality, cannot properly be accounted a class society, unless, taken as a whole, the structure operates to the advantage only of one limited faction.

The essence of justice is objectivity (140), that is, impartiality, and thus negates merely subjective interests; it follows that this objectivity is only brought to the culmination of its progressive realisation when the separation of Right from subjectivity in the form of factional interest is complete.

I have in this, the opening chapter, sought to pursue an analysis of the anatomy of the Idea of Right, consisting in its formal structure, and of the precise relationship of this form to substance, and of the nature of the connection between the two. To an elaboration of the crucial element, that is, the function which values perform in human existence, and to the substantive principles arising therefrom, I now turn my attentions.

Chapter 2; Alienation, Law and Reason; An Account
of the Cultural Evolution of Mankind.

"History ... is the long road of mankind to conceptual and practical domination of nature and society, which comes to pass when man has been brought to reason and to a possession of the world as reason" (1)

(i) On Nature

It will be recalled that in chapter 1 I provisionally defined nature (2) as consisting in the unrestricted totality of those entities and processes which possess objective existence, and are not therefore contingent upon human consciousness. It is this external reality which directly confronts the subjective mind at the beginning both of personal existence, and of the history of mankind.

It was one of the fundamental tenets of Hegel's idealist philosophy that the essential constituent of reality is mind, without which the existence of material objects is an impossibility. According to this view, the objective universe exists as the externalised creation (3) of the universal spirit, which has the former as its embodiment, and which manifests itself in the world through the vehicle of human consciousness, its phenomenal reflection. In the course of world history, spirit progressively returns to itself by coming to recognise itself in the world of objects, and is one with it. As the unconditional creation of the absolute spirit, or God, the world of objects conforms to rational principles. As mind advances, it attains an ever greater perception of the laws of nature, and in the final phase of its self-development, absolute knowledge is attained when mind comes to grasp that, all along, the nature which it has been contemplating is not some alien "other"; rather, it has itself for its own object.(4)

Professor Hegel's ambitious, and, as some would have it, implausible, thesis shall not be followed here as received truth. This is because, firstly, as has already been stated, an enquiry into the metaphysical foundations of the substance of reality exceeds the scope of this present work; and secondly, because it does not appear to be true. Whilst, certainly, the laws of nature

lend themselves to conscious understanding and direction, there appears to be no basis for the view that these laws have their origin in consciousness in any form. I certainly concur with Hegel that consciousness shapes its own environment, but it does so not by fabricating nor by altering the laws of science, but by utilising them. As a specific instance, all weighing instruments make use of the law of gravity, whether by means of the principle of the beam, the spring balance or the load cell, but the law of gravity goes on as unchanged and unchangeable as if these machines had never been devised.

It is true, in a limited sense, that the world conforms to inherently rational principles. In particular, it should be noticed that understanding, and therefore science and knowledge would be impossible if it were otherwise, and the world was not describable in terms of general laws, for understanding requires rationality on two fronts, in the mind of the knowing subject, and in the constitution of the object; understanding is nothing more than an apprehension of general truths, on the basis of which analysis and prediction may proceed, and so it follows that where there is no such pattern of generalities, neither can there be understanding. However, it is simultaneously true that the natural universe is irrational, in the sense that in itself it knows of neither purpose nor direction. This is not to be taken as implying that the natural system of things is static; on the contrary, it has many laws which are process principles, that is, which are concerned with the growth and decay of plant and animal life, and of celestial bodies. What I do wish to convey is that where tendencies towards end results are to be found occurring naturally, they are to be accounted as entirely fortuitous from the viewpoint of sentient will, which alone can impose purpose and rational direction upon its environment. (5) Nature, then, is in the most simple terms, what is; it represents the category par excellance of "sein" as opposed to "sollen". (6) It has no inherent rightness nor legitimacy, but neither is it the creature of Manichaeism (7) wilfulness. I do not mean that the effects of undirected natural laws are a matter of indifference; on the contrary, there are a very great number which either positively or adversely affect sentient interests. What I do intend to say is that where either of these

effects occur, they do so blindly, and not as the outcome of benevolence nor malice.

Accordingly, I would affirm that human progress entails the subordination of natural forces to human ends, and reject the contrary identification of what is natural with what is right, on the grounds of being in harmony with the universal order. It was in this spirit that Pope Leo XII forbade vaccination against smallpox as being contrary to nature (8), the same nature that is possessed of a ferocity and violence which is all its own.

Nor, in respect of this exaltation of nature, would it seem that the Roman Catholic Church has advanced significantly in its teaching. In The Catholic Marriage Manual (9), a volume duly granted the Nihil Obstat and the Imprimatur (these being "official declarations that a book or pamphlet is free of doctrinal or moral error") both by the Archdiocese of New York, and by the Archdiocese of Westminster, we discover frequent instances, particularly in the context of birth control, of the identification of what is artificial with what is immoral; indeed, the two are treated as if they were direct synonyms. In this assertion, we have no lesser authority than that of the Pope himself;

No reason, however grave, can be put forward by which anything intrinsically against nature may become conformable to nature and morally good. (10)

Marx knew of the autonomy of the will, and of nature's true status. He considered it one of the prime achievements of and historical justifications for the capitalist epoch that what he referred to as the "idolatry of nature" (11) was dissolved, as

Nature becomes for the first time simply an object for mankind, purely a matter of utility; it ceases to be recognised as a power in its own right; and the theoretical knowledge of its independent laws appears only as a strategem designed to subdue it to human requirements, whether as the object of consumption, or as the means of production. (12)

This then is the external necessity which the rational subject is called upon to master, and in opposition to which

there arises will, which is the corollary and exclusive province of mind, that is, personal, spiritual existence. Consciousness begins its odyssey of self-assertion over the objective world when the rational individual, in an act of appropriation, first seeks to direct his environment towards the fulfilment of his needs and desires. In this sense, the rise and not the fall of man begins with the taking of an apple from a tree. Full subjective rationality is attained in the movement in which mere immediate desire proves to be a self-contradictory form of will, and is superceded; in the ensuing condition of things, immediate desires are subordinated to perceived future needs. The taking of fruit which fortuitously happens to be growing on trees is replaced by the intentional cultivation of crops for future consumption, and in the place of the occupation of natural shelters such as caves men come to construct dwellings using such natural materials as come to hand.

The subjective ego accordingly realises itself in the principle of subjective rationality, and comes to govern itself by means of hypothetical imperatives (13) and general maxims of conduct (14); will or volition alone causes the external environment to grow conformable to its own designs.

(ii) On Society.

And here, if there were but a single mind, or at the least an unrestricted innate harmony of subjective wills, the story would approach its end. The ascent of man would consist purely in technological progress, as opposed to being a more complex movement simultaneously embodying a social and ethical process of development.

But the term "social", and its relationship to ethical, and other normative systems, requires to be illuminated. The normative sphere, as was argued in chapter 1, is an essentially social phenomenon. This is because values are not to be found as self-subsistent entities in the physical world, but arise in relation to socially attached significances, and, therefore, within the wider context of the process of the transformation of the world from being so many naturally occurring substances and

processes to a condition of being composed of objects which are definable solely in terms of function. Biological man becomes man in society in that movement in which he becomes party to shared understandings, such as linguistic usages and moral values. Society, therefore is by no means an "all or nothing" phenomenon, but on the contrary comes to be actualised by degrees. The social bond is one and the same as the totality of shared significances subscribed to and recognised within a given group of human beings. Through this identification of a social form with its characteristic terms of association, we discover that the development of human society is simultaneously the development of Right, and therefore, of freedom, volition and reason, which I shall attempt to demonstrate are its corollaries. It also follows that the highest condition of Right is inseparable from and logically coterminous with the actualisation of the highest form of society. This is the society to which the ideal system of values is both appropriate and applied, just as any mode of society is to be identified by and with the substance of its dominant normative ideology.

But what is the definitive role which normative values play in human existence, that is, what is that essential function which gives rise to the touchstone for the evaluation of specific norms and systematic conceptions of Right? In this section I shall attempt to give a full answer to this question, and the answer that I shall give, in its basic essentials, is that the function of the institution of social values is to provide the means to the overcoming of the difficulties involved in the concept of subjective instrumental rationality. More exactly, this role arises in relation to the perceived logical inadequacy of subjective rationality as a conception of will. And since subjective instrumental rationality is the expression of the will of the subject, this is no less than the claim that the subjective will is itself an inadequate form of will, properly conceived.

One recent ethical position which is broadly analogous to that which shall be expounded here, in that it proceeds from a view of the institution of societal norms as being a positive, man-made device having a determinate and ascertainable function or object, is contained in G.J. Warnock's The Object of Morality (15).

The central thesis of this work would seem to be that in order to understand a particular species of evaluation, it is necessary first to be aware of what is hoped to be achieved by that species of evaluation. (16) This doctrine however, is significantly different from that which is expounded here, for in this present essay it is claimed that the criteria for a given mode of evaluation arise not from the mode of evaluation itself, but from the activity evaluated. The institution and propagation of societal rules is conceived of as a conscious activity, an evaluative activity is itself evaluated; it must at all times be remembered that a double normative is involved.

Although by a more simple route, Warnock arrives at much the same enquiry as is arrived at here, that is; what is the purpose of rules of conduct? Accordingly, he sets out the question of;

What it is in the human predicament that calls for amelioration, and second, what might reasonably be suggested (to put it guardedly) as the specific contribution of 'morality' to such amelioration. (17)

However, Warnock's examination of this contribution, and of the "human predicament" is less than inspiring. In fact, he does no more than argue from "limited sympathies", and to a subsidiary extent, "limited rationality"; it is these defects which, we are told, morality is brought into the world to countervail. (18) No more penetrating analysis than this is attempted.

Far more illuminating in this respect is J. R. Lucas's On Justice (19) which sets out to account for the contribution of rules of conduct by means of reference to "Game Theory". Game Theory is concerned with the philosophical expression of the inadequacy and limitations of subjective instrumental rationality through a consideration of such model constructs or "parables" as the prisoners' dilemma.

Consider what is apparently the original formulation of the prisoners' dilemma; according to Lucas, it was first set out by A.W. Tucker (20), and it is repeated both by Lucas himself, and by Lawrence H. Davis, in his article "Prisoners, Paradox and Rationality".(21) The scenario, as related, is as follows.

Two men are under suspicion of a serious crime and, additionally, a much less serious charge is also preferred against them. (In neither of the two accounts is the serious crime identified; however, according to Davis the minor charge is that of carrying concealed weapons, whereas according to Lucas's account, it is tax evasion). They are apprehended, and held in separate cells. Each is offered the following deal, to the knowledge of the other; (1) If he confesses to the serious charge, he can then turn state evidence, and provided the other prisoner thereby implicated does not also confess, the first prisoner will be given an unconditional amnesty, while his partner in crime will be jailed for twenty years. (2) If both prisoners confess, they will each receive a sentence of five years. (3) If both remain silent, since it would not then be possible to gather sufficient evidence to secure a conviction for the more serious charge, they will each be jailed for one year only on account of the minor charge.

Let us suppose that you and I are the two prisoners. This being so, our pay-off matrix is as follows (in Game Theory terminology, each of the four squares represents an "outcome", which is itself subdivided into two "payoffs", one for each "player");

	I CONFESS	I DON'T CONFESS
YOU CONFESS	<p>I GET 5 YEARS</p> <p>YOU GET 5 YEARS</p>	<p>I GET 20 YEARS</p> <p>YOU GO FREE</p>
YOU DON'T CONFESS	<p>I GO FREE</p> <p>YOU GET 20 YEARS</p>	<p>I GET 1 YEAR</p> <p>YOU GET 1 YEAR</p>

Figure 1.

It is consequent from this situation that whether you confess or not, I will in either event be better off if I confess; if you should decide to confess, then I receive a five year sentence, whereas, had I not confessed, I would have been condemned to twenty years. And should you elect not to confess, then I go free, instead

of serving the one year sentence which I would have incurred by not confessing. You will reason similarly, since our predicaments are precisely symmetrical. This being so, I can infer with a high degree of confidence that you will confess, and on this assumption I shall base my actions. We are thus both led by the logic of our situations to confess.

The important point is this; we encounter the paradox that through separately following the course directed by considerations of immediate personal advantage, we jointly elect to incur sentences of five years apiece, while had we taken the opposite course of action, our sentences would have been for the much shorter period of one year. This paradox, indeed, is all the more acute since had it been our joint aim to go to prison for as long as possible, we would have been impelled to decisions which would have led - as the reader will observe - to us being given sentences for the shorter of the two periods. In either case, it is from either of our points of view too dangerous to attempt to resist the determined outcome, that is, to rely upon the other to also choose to pursue the perilous option. For, to do so would be to risk a sentence of twenty instead of five years, and it would also entail abandoning all hope of being set free. And, in any case, insofar as it is permissible to adopt the not unrealistic postulate of unconditional self-interest on the part of us both, there can be no motive whatsoever for either party to take this risk. We are each effectively presented with an impasse which there is no prospect of either of us separately breaking through.

There is a variation on this theme which is set forth in David Lewis's article "Prisoners' Dilemma is a Newcomb Problem." (22) Again, we have two prisoners in symmetrical predicaments. Again, also, the conditions of the prisoners' mutual isolation and knowledge of the other prevail.

Each has placed before him \$1000, which he can elect to take or not to take, on the basis that he may keep the \$1000 if he chooses to take it, while if he elects not to, his counterpart receives \$1,000,000. The payoff matrix which appears in Lewis's article is as follows; (following Lewis, I shall use the verb 'rat' to denote election to appropriate the \$1,000.).

		I RAT		I DON'T RAT	
YOU RAT	YOU GET \$1000	I GET \$1000		I GET \$0	
		YOU GET \$1,001,000		YOU GET \$1,001,000	
YOU DON'T RAT	YOU GET \$0	I GET \$1,001,000		I GET \$1,000,000	
		YOU GET \$0		YOU GET \$1,000,000	

Figure 2.

Let us examine the decision with which both prisoners are confronted, in seeking to maximise their respective pay-offs. Each perceives that whether or not he rats has no bearing on his opponent's decision, nor therefore on whether or not he can expect to receive \$1,000,000. As one of these captives then, I reason in my isolation that whatever you do, I will be \$1,000 better off if I rat than I would be if I do not. Therefore, acting in accordance with this watertight logic, I rat, as so shall you. The remarkable and paradoxical conclusion which we arrive at this time is that each of us receives \$1,000 only, whereas had we both acted in a manner contrary to perceived self-interest, or even acting so as to receive as small a sum of money as possible, we would each have received the much larger sum of \$1,000,000.

Let us look at one final example from a third source, J.L.Mackie's Ethics - Inventing Right and Wrong (23), in which the following scenario is presented (24);

There are two soldiers, Tom and Dan, each of whom mans a separate strongpost against an enemy advance. Neither is in a position to observe the other's actions, although each is fully aware of the existence and situation of the other. If both soldiers remain at their respective posts and resist the enemy advance, each stands a reasonably high chance of survival (let us say 50%). If both turn and run, each stands a poor prospect of

survival (say 20%). If one runs, and the other stays, the one who runs stands a good chance (70%) of survival, while the one who stays has a very poor chance (10%). This time, the pay-off matrix looks like this;

		DAN	
		RUN	STAY
TOM	RUN	20% 20%	10% 70%
	STAY	70% 10%	50% 50%

Figure 3.

It should be observed that immediate self-interest will, this time, counsel flight, and that Tom and Dan - each of whom, it should be recalled, is separately acting so as to maximise his own personal prospects of survival - are led, in effect, to elect for a 20% chance of survival, whereas, had they chosen otherwise, that is, acted in a manner contrary to immediate self-interest, they would have held a 50% prospect of attaining the end which is, ex hypothesi, desired.

It is in the light of such considerations that Lucas concludes (25);

too exclusive a concentration on one's own short-term interest can be self-defeating, as the Prisoners' Dilemma shows. To be really rational, we shall need to expand our concept of rationality, to take a wider perspective and a longer view.

We are also furnished with the concepts which are necessary to an explanation of R.B. Braithwaite's comment (26) to the effect that

It would be reasonable for Robinson Crusoe to aim simply at maximising his own satisfaction while he was alone on his island.

but that with the advent of Man Friday, a separate personal identity, the situation is qualitatively and not merely quantitatively changed. The agent trapped in the prisoners' dilemma finds his rationality turned against him, in that instead of it being the means to enabling him to direct his efforts to the bringing about of the more favourable of two outcomes, he is impelled by it to the less favourable outcome. His merely subjective freedom is revealed to be a mode of determination by external forces, and all element of choice - presupposed by will - is eliminated. Rationality, freedom, will, mind, improperly conceived, are swiftly transformed into their opposites.

Proceeding now to apply this vision of the futility of general unconstrained pursuit of the immediate advantage to concrete human situations, we find that these tend to differ from the theoretical, imaginary constructs which we have been considering in two primary respects. Firstly, the same types of situation will arise with considerable frequency in human experience, and not merely on a "one-off" basis. Secondly, whereas in all the models examined, there have been two "players" involved, there will in practice invariably be more than two, and, indeed, there will be an in principle unlimited number.

Examples of conditions of what I shall refer to as alienation, the opposition of subjective to objective rationality, can be found at several levels of cultural development, chiefly in relation to competitive economic interaction, and can also be characterised as the division of the immediate personal interest, as against the social interest. And, following from this, on the basis that whatever is in any real sense in the social interest must thereby be in the interests of the individuals concerned, it is therefore further consequent that an opposition of the subjective will or consciousness to itself can also be perceived.

One such illustration is the problem of overpopulation in lands such as India. Clearly, it is in the general interest that population growth be restricted according to the limits imposed by the availability of natural resources; but in the absence of an old age pension scheme, it is in the vital interests of the individual peasant to bear as many children as possible, in order to be ensured of adequate support in his advanced years.

and also
before

Many other instances emerge in the course of social development, (27) and these shall be identified as their proper contexts arise. For now, it is sufficient to notice that in such situations, an attempt by any altruistic soul to resist the general flow would amount to no more than an act of spectacular but futile self-sacrifice, achieving nothing with regard to the aim of resolving the impasse.

The unco-ordinated actions of subjective wills tends to generate movement towards broader unintended consequences, which assume the form of mechanistic regularities possessing the characteristics of independence and detachment from will. Mind thus finds itself once more exiled from the world of purpose and meaning to the world of cause and effect, and mere subjectivity comes into contradiction with its own essential postulate of instrumental rationality, as a specific relation of means to end.

Taylor graphically depicts this self-opposition, the abstraction of subject from object, in the following terms;

Subjectivity thus spawns two worlds, as it were, the unconscious world of nature and the conscious one of moral action and history. Having the same foundation, the two strive to rejoin each other (28)

However, even at the highly theoretical and artificial level on which the model situations were earlier presented, the general outline of the reconciliation referred to in the second sentence of the above quotation is clearly emergent, being indicated by the nature of the problem itself. What is needed is for the "players" to form a "coalition" (29), in terms of which they jointly agree in advance to follow the course of conduct which will conduce to the commonly desired end, or even to be forced to do so. (In Mackie's example, Tom and Dan both consent to being chained to their respective posts, provided that this is also done to the other (30)).

In this movement, in which the counsels of immediate advantage are subordinated, "first-personal" (31) modes of reasoning are superceded in favour of "omni-personal" (31) considerations, and, corresponding to this, categorical rules of just conduct emerge from the abrogation of hypothetical maxims of

action. Categorical rules are normative, not merely prudential, and also possess the dimension of universality in addition to that of generality. It is by this means that objective rationality comes to be realised. Nor can it be doubted that what is objectively rational in any given problem situation is logically determinate, since it is already implicit in the subjective rationality which objective rationality abrogates by becoming explicit. This follows whether we endorse the postulated aim or not, since all the hypothetical situations discussed above are fully reversible, in that, in the first, as has been remarked, attempts by each prisoner to secure as severe a sentence as possible would secure sentences of one year each, instead of five years. Similarly, in the second, if the aim were to receive as little money as possible, the players would be led to converge upon the outcome in terms of which both receive \$1,000,000 instead of \$1,000, and, in the third, if Tom and Dan were to try to be killed in action, each would have his chance of survival increased from 20% to 50%. It is this objective rationality, this inner, though hidden unity of purpose which enables law and morality to enter into existence; and if it were not so hidden, then law and morality would be unnecessary and indeed inconceivable.

We have thus far attained a general and formal account of the role which norms of conduct play in human affairs, but if the resulting understanding is to provide a basis for deducing not only why but what rules are required, then we must have recourse to that particular form of alienation which is specific to and immediately precedes the original institution of human society, and which therefore underlies the account of the emergence of societal rules as such, and not merely of any particular rule or rules. The analysis of this condition of estrangement finds its classic exposition in Thomas Hobbes' book Leviathan (32), and is identified as "the state of nature", the negation of society. (33) The line of argument which I adopt is that such an analysis affords a perception of the essential function of societal rules, and hence yields a means to the deduction of their proper substance. To an exposition of Hobbes I accordingly proceed.

In the beginning (that is, at the necessary starting point of cultural evolution), the individual mind is confronted by others

and (as we have seen) by the physical world as wholly alien phenomena, terrifying and incomprehensible. As between individuals, it is the age characterised by the paradox of absolute freedom; if one defines freedom as an uncurtailed immunity from the possibility of constraint by others, it is clear that total freedom for more than one person is wholly impossible. Here, there is no property, no contract, and therefore no division of labour; consequently, the increased production and efficiency which this last makes possible is lost. (34) There are those on the political left (35) who contend that the identifying feature of the law is that is is the means whereby all instruments of production are reserved to the direction of the predatory classes; this view does not go far enough, for in the state of nature, not only can there be no private ownership of capital, but no capital at all. The division of the population into classes presupposes a relative degree of social stability. This idea, which is corroborated in general terms by John Stuart Mill (36) is expressed by Adam Smith thus;

It is only under the shelter of the civil magistrate that the owner of the valuable property which is acquired by the labour of many years or perhaps of many successive generations can sleep a single night in security (37)

Human reason has not yet attained to the stage of development where contract might emerge; no exchange of entitlements takes place, for the quite simple reason that, as yet, no entitlements exist. By reason of the diffidence with which men behold one another, nothing is produced, for fear that others will come armed against them; the necessary but unintended consequence of this joint inefficiency of conduct, this opposition of the particular to the general interest, (38) rooted in the material conditions of life, is that all are condemned to the most degraded subsistence, they are as "the ravens; for they neither sow or reap; which neither have storehouse nor barn" (39).

For whilst reason would direct Robinson Crusoe to make

efforts towards the cultivation of crops and so forth, in order that his material environment might be determined to the satisfaction of his (single) will, the introduction of further rational self-interested inhabitants to the island procures a curious inversion; for this same rationality will now direct our isolated self-interested individual not to expend his efforts on the cultivation of crops, since these will only be appropriated by another, by force or stealth. Subjective rationality, as

arbitrary will which in deciding may proceed...
by using intelligence to calculate which impulse
will give most satisfaction, (40)

secures its own self-abrogation, as we have seen. Here, the consequence of a general pattern of individuals acting in pursuance of the immediate advantage over others, that is producing nothing, and attempting to appropriate the fruits of others' labours will clearly bring about a condition of things in which nothing whatsoever is produced, and the needs of the various competing agents go unsatisfied. And this is not because of any lack of subjective rationality, but rather at its behest.

Men are led to a life of total conflict, not because any among them wish this to be so, but through the necessity for launching pre-emptive strikes against potential aggressors; the demand for security directly promotes and indeed necessitates the radical insecurity of life. Consequently, each and every individual is drawn into an all-engulfing contest for the necessities of life, (which themselves become ever more scarce as the struggle grows in intensity; a vicious circle is thus established) bellum omnium contra omnes; a war, as with all wars, in which there are no victors. Alienation can in any epoch and in any form have attributed to it a definite social cost; for conflict implies destruction, quite apart from the general pattern of misdirection of human endeavours;

Being distracted in opinions concerning the best use and application of their strength, they (men) do not help but hinder one another, and reduce their strength by mutual opposition to nothing. (41)

The same holds true for disharmony in any form. To take

but a few examples there were the vast resources, urgently required for other purposes, consumed in the insanity of World War I; and at the present time, colossal wealth is being expended on nuclear weapons, together, for example, with the cost of maintaining a standing army and a police force, all of this having its origin in the separation of man from man. (42) It is indeed strange that Hobbes's famous aphorism "solitary, poor, nasty, brutish and short" (43), as applied to the quality of life in the state of nature, is invariably quoted in the shortened form of the last three adjectives alone; I should have thought that the operative concept was "solitary". The lasting value of Hobbes's *meisterwerk* is that it provides us with a model of unreason, the absence of community, its central conceptions being applicable to disharmony of purpose in any form. It is in this basic model that we come to perceive the paradigm form of estrangement, or alienation, a theme which emerges repeatedly throughout history in many guises, until finally overcome by an eventual ideal ordering of things; it is in these terms that Hegel's central thesis to the effect that human history develops as a progression along the way of the resolution of successive forms of alienation is to be best understood. For what we are here considering is indeed alienation in the Hegelian sense (in the German "trennung"), in that since the actions of separate individuals engaged in competition give rise, as we have seen, to new mechanical laws detached from and external to will, it entails the separation of subject from object in addition to the estrangement of subjective minds one from the other. The fundamental contradiction consists in that subject as finite spirit of necessity enters into opposition with itself as externalised object. Further, as we have observed, alienation entails the separation of the subject from himself, as both a phenomenal and a noumenal will can be distinguished. That is, the subject will essentially wish to pursue conduct which maximises the production of objects of value, and conduces to stability, and yet is constrained by his external circumstances to pursue conduct which directly contributes to the frustration of this commonly shared end. It is by the power of the negative, and through successive determinate intermediate stages that the principle of

liberty or freedom subject to constraints comes to self-assertion; the earlier analysis concerning the resolution of the tension as between the universal and particular wills by means of rules of conduct applies no less to the state of nature than to the various hypothetical constructs considered earlier, the substance of these rules being determined by the nature of the impasse. In the words of Hobbes,

And reason suggesteth convenient articles of peace, upon which men may be drawn to agreement. (44)

The eventual completion of this movement towards the principle of freedom under the law heralds the advent of civil society, of which more shall be said presently. (45)

Abstracting from the foregoing, it is now possible to arrive at a statement of the characteristic function of the institution of societal norms, as consisting in the following objectives, in descending order of generality;

1. Advancement of sentient will. This much follows from the fact that the institution of rules of conduct is a functional device, without the need for any further enquiry as to what the function is. It should however be observed that the concept of will itself progresses within the process of historical development, and that the conceptual development of the Idea of Right follows the latter phases in the development of the Idea of will.

2. Following from this, the reconciliation of subjective and objective rationality, in which movement the intimate connection between will and Right is made clear, in that within it subjective will is simultaneously abrogated and yet conserved as an element of the latter.

3. Hence, the maintenance of conditions of security of person, possession, and exchange, within which an overall picture of harmonious interaction and social co-operation can emerge. It can thus be seen that the chief point of departure of the present essay from utilitarianism in any form, lies in the contention that the telos of Right is considerably more specific and determinate than the indefinitely wide concept of utility.

At this juncture, one refinement presents itself as

necessary; thus far, I have dealt only with the function of societal rules, and I have not adequately distinguished between legal and positive moral systems. Throughout, the implication has been that both have their origin in social convention; in the case of morality, rules and usages arise directly out of convention, whereas legal rules are formulated and promulgated by institutions which owe their rule-creating capacity to it. One further distinction is that legal norms tend to be associated with coercive sanctions (46), and accordingly, with a view to elucidating the role of the specifically legal normative systems in human affairs, I shall now turn my attentions to the task of explaining the function of sanctions.

We have thus far seen that the more-or-less universal observance of certain rules of conduct is essential and indispensable to the maintenance of social life. Indeed, one consequence of my earlier equation of a society with its characteristic normative structure is that conduct which is inherently right is that which is simultaneously inherently social. (47).

However, even if spontaneous observance, based on the wider conception of rationality, and indeed of self-interest, could be miraculously induced overnight, such an arrangement would be intrinsically unstable. Why this is so, and for what purpose coercive sanctions are thus made necessary, is made pellucidly clear by J.R. Lucas, who states that (48)

Although we can all see that civilised society is better for all of us than the state of nature, each one of us can also see that he would be better off still if he did not keep the agreement while the others did.

He continues,

It is easy to revert ... to the more limited rationality which does not enter into the reasoning of others but, taking them for granted as external entities, seeks simply to maximise one's own payoff in the given situation. There is a standing temptation to cheat. And men being frail, some will succumb. And once the condition of everyone's keeping the agreement fails

it seems pointless to keep it oneself, and the whole agreement breaks down. Conventions are doubly vulnerable. Everyone is tempted, and once anyone yields to temptation, the rationale of others resisting is weakened, if not destroyed.

Lucas employs the expression "moral mugs" (49) to describe those who continue to observe social standards of conduct after others have ceased to do so. It will be recalled from the basic model pay-off matrix that those following this pattern of behaviour will fare even worse than if they had abandoned all conventions. This is the factor which, as we have seen, creates a strong element of self-sacrifice. And, after all, we are here concerned with a social arrangement involving not two, but many, agents; it will of course be observed that the larger the number of agents involved, the less is the likelihood of universal compliance proving to be viable; particularly since not even simple subjective rationality can in all cases be assumed.

By means of an analogy with queuing, and queue-jumping (50), Lucas argues that any convention can survive a small number of violators seeking only maximum advantage for themselves, but that beyond a certain point the whole arrangement collapses, since most people will adhere to conventions only on the condition that a considerable majority of others do likewise. There is a clear analogy here with the concept of unstable equilibrium in physics - and, indeed, the savagery of the state of nature can equally be likened to stable equilibrium. Since society, in all its forms, perches precariously over the pit of savagery, an element of artificial stability requires to be introduced, and this is provided by the authoritative ^{at} deployment of force. Lucas sustains the queue analogy by quoting (51) B.G. Mitchell as having written that;

The presence of a policeman ready and able to deter potential queue-jumpers would reinforce the disposition of the ordinary man - the man waiting for the Clapham omnibus - to keep his position in the queue.

Social disintegration, if it goes unchecked, is an accelerating process, since the observance of rule-governed

behaviour breaks down swiftly, and at an ever increasing rate, once the movement has begun. (52) It is thus the function of coercive (legal) sanctions to deter that minority of reprobate individuals who cannot otherwise be persuaded to behave other than in accordance with direct personal advantage or even wantonness, and by this means to prevent the "snowball" of social collapse from reaching an uncontrollable velocity.

We in fact arrive at a perception of law as the specific means by which social, real rationality is made actual in the minds and practices of men, standing in opposition to the total estrangement of the state of nature. Our enlarged conception of rationality thus roughly corresponds to "the state of rational freedom" (53) earlier discussed, in which each subject directly and rationally comprehends the basis by means of which one rule or system can rationally be preferred to all alternatives, and simultaneously finds this rationality duplicated and confirmed in the actual structures and practices of his own community.

The single element which gives systematic identity to the various inconveniences of the state of nature is the radical separation of man from man. Hobbes's vision affords us an illustration of the intimate logical connection of a condition of things with its opposite; the Idea of law or of social reason in its highest realisation or development slumbers latent within it. In the philosophy of Aristotle (54), the essence of anything developing is one and the same as its purpose, end or highest condition of development. Development is the actualisation of potentialities inherent in the nature of the entity itself; thus it is that the Ideal together with the various successive phases of social organisation entered into by man in the course of his cultural evolution follow by the force of logical necessity from the facts of personal existence. All that remains, as it is with all processes of reasoning, is for what is already implicit to be rendered explicit.

(iii) On the Development of Human Society.

Necessity, then, gives rise to the first form of social grouping, based on the natural family; but as with all other stages of social development, as a particular form of the general tendency of the thing in an imperfect state of development to transform itself into its opposite, cohesion on one level serves merely to satisfy the precondition for alienation to re-assert itself at a higher level. This tendency of cohesion to produce conflict at a higher level is no simple one-way relationship of cause to effect, but is rather one of bilateral causation; as a logical category, the relationship is characterised by Hegel as weschelwirkung (55). Thus cohesion may frequently arise in response to the threat of a common enemy, so that social solidarity is founded upon the solid base of the co-incidence of material interests (56).

And so the conflict rages on; men stand united, but only against each other. The state of nature determines its own solution, but simultaneously militates against its implementation; it is this factor which fixes the successive phases of social advance. Solidarity within the clan grows in proportion to externalised antagonism, which induces further conflict, and so on, in vicious and ascending spiral. Unflinching loyalty to one's own faction, rather than the objectivity which underlies the universally applicable norms of justice, becomes a necessity for continued personal survival; as recorded by the Old Testament (57), the destruction of members of other opposing tribes is considered morally neutral, or even meritorious. Men are thrown upon an endless series of vendettas, or reprisals and counter-reprisals. With ever intensifying animosity, this tendency escalates, the antagonisms deepen; a modern parallel is afforded by the sectarian feuds of Northern Ireland. (58) In this divided state of social unreason, all that flourishes is hatred that is mutual, bitter and ensconced; bitterness escalates in direct proportion as the memory of the origins of the quarrel recedes.

There will be those who reject my account of the anarchic phase which immediately precedes the rise of private property, and who give preference to Marx's depiction of primitive

communism (59), an idyllic phase peopled by not so distant cousins of Rousseau's "noble savage" (60), holding the means of production, i.e. the land, in common. On the contrary, I would hold that insofar as such community ever existed, it did so only within small, isolated clans, and only within the context of a general social discord. Further, I would contend that the experience of the endemic violence of medieval Scotland (61) is by itself practically sufficient warrant for dismissing the Marxian account as being in this respect largely fictitious.

The question of the beginning is of not inconsiderable significance; a pillar of the Marxian account is the view that communism represents the original and authentic expression of human nature that must sooner or later reassert itself, bringing with it the withering away of the coercive machinery of law and state (62), so that temporarily submerged essence takes the place occupied by hidden, undeveloped essence in the Aristotelian account of destiny. With the assertion of the less optimistic view, the question becomes not so much one of human nature (63), but rather one of human potentiality, what can be achieved, given human limitations. Thus for example, the entire concept of social development comes to revolve around such questions as that of whether war, or rather, antagonism generally, is an immutable feature of the human condition, or whether it can be satisfactorily explained as being produced out of circumstances external to the human volition.

At a certain stage of social development, then, the main problem is that of suppressing the endless blood-feuds, and particularly the need to restrict the impulse for revenge. The principle of an eye for an eye, a tooth for a tooth (64) arises out of the need to satisfy and thus contain this impulse in such a manner as to terminate disputes, especially prior to the emergence of legal organs. (65) Thus by the creative force of social convention, two acts in themselves distinguishable if at all only by order of sequence, become characterised as logical opposites, as crime and punishment, delict and sanction, abduction and arrest, intimidation and deterrence, and so forth. The absolute historical necessity of a charismatic priesthood arises here also, for at this stage it is only by means of an appeal to men's belief in the supernatural that they can be induced to accept

principles of any kind. There arises, however, as a direct consequence of this appeal to superstition a curious inversion; the rules of convention are not comprehended for what they are, but rather come to be viewed as products of divine or at least superhuman will, and all moral obligation is conceived of as deriving from a prior absolute duty of obedience to God (66). From this arises a taboo conception of morality, consisting solely in duties without collateral rights, these having no necessary relation whatsoever to human wellbeing. Hence in Leviticus, the third book of the Old Testament, God purportedly forbids on pain of death by stoning or burning a long catalogue of "wrongs", including homosexuality (67) and witchcraft (67).

This hideous compilation of tribal imaginings came to form the basis of the doctrines of the Calvinists, whose pre-eminence afflicted western Europe in the 16th and 17th centuries (68), and discloses a conception of Right of the most severely deformed sort.

Under threat of invasion from without, men are led to converge upon an absolute monarch, a charismatic figure who seems the only means of deliverance from internal chaos and external aggression. In the words of Virgil,

But then they may chance to see some man whose
character and record command their respect. If
so, they will wait in silence, listening keenly.
He will speak to them, calming their passions and
guiding their energies. So, now, all the uproar
of the Ocean subsided. (69)

And, later, they converge upon the hereditary principle, which, for all its defects, presents itself as the necessary and inescapable solution to the debilitating scramble for power and consequent lapse into disorder and anarchy that accompany the monarch's demise (70). Equally, the hereditary principle provides a means to a stable succession of property generally. The first state to extend beyond the single city arises, based upon the "religious and political illusions" (71) of feudalism. The social environment comes to be characterised by a rigid social and military hierarchy, based upon rights of private property in land, which are contingent upon the absolute right of the king and

are held in return for allegiance and military support.

Hobbes argued for absolute monarchy on the grounds that any limitation of the monarch's power is a partial obstacle to commonwealth (72) and, to begin with, this is entirely true; just as at this time harsh, inhuman penalties are necessary also, in order that the law becomes a credible deterrent, since at this time the vast bulk of crime goes undetected, and also because of the urgency of the continuous struggle against the regression to anarchy. This historical precedent of feudalism, incidentally, raises the suspicion that, in the present age, a necessary prelude to a stable world unity is tyrannical world domination by a single power.

However, here, as elsewhere, we encounter the characteristic paradox of social advance; at every step forward, the separation of man from man re-asserts itself at a higher level of refinement. The progress of human society is simultaneously the progress of human division. The rise of the state brings the beginnings of conflict between states, and also of conflict between the rulers and the ruled; this latter opposition finds its theological expression in Roman Catholicism, and is also paralleled by Plato's characterisation and analysis of "Timarchy" (73), which involved the subjugation of the population to an entirely separate minority caste of expropriators.

At the base of the feudal hierarchy were the serfs, subject workers of the land, relentlessly exploited by church (74) and state alike. They were not the private property of their masters but neither were they free, being tied to the soil and compelled to serve them unquestioningly in war as well as in peace. Indeed, these mere appendages of the soil enjoyed no great advance on the slavery which tended to be associated with the earlier city states; rather, in many respects their condition was much worse. In the latter years of Imperial Rome, the slaves were accorded a certain modicum of legal protection, while recourse to the courts for serfs was by no means universal (75). Even where recourse to the courts was available, the serf had no redress against the lord and his officials except in the master's own court. (The very word "court" is in itself an etymological reminder of this feudal past; it originally referred to the court-

yard of the lord's castle, in which these early tribunals were held). In any case, it was wholly unnecessary for the lord to invoke legal rights against the serf; for it is in the very nature of feudalism that rights, such as they are, are dependent upon and flow from those of the superior, and as is most clearly demonstrated by the system of land tenure which, as we have seen, forms its foundation, ultimately all rights flow from the monarch's claim to all things.

The most atrocious penalties, moreover, were inflicted for acts of rebellion; on the Platonic principle, such divided societies are

"necessarily brutal to their less privileged classes" (76)

The government which lacks the solid foundation of ostensible popular consent must resort to naked violence, and since this repression further alienates the people, a vicious circle is established. In direct proportion there grows a demand for an impersonal conception of law, according to which the rulers no less than the ruled shall be subject to the rule of law. Feudalism of necessity demands blind allegiance, but the clamour for moral autonomy asserts itself in the religious sphere in the iconoclasm of Reformation (77), and, later, it is demanded that all things shall be made conformable to standards of universal reason (78).

Feudal absolutism, however, serves a function which is demonstrably historically necessary; it serves to induce a sufficient modicum of social cohesion on which civil society, which follows it, may flourish. Unfortunately, however, rules and institutions do not simply dissolve when their rationale is gone, as it were, spontaneously, but rather come to be exalted as immutable and essential parts of the eternal, natural order, particularly by those powerful individuals whose interests they serve and express.

Against this entrenchment, it is argued by Hegel, that,

once the origination of an institution has been shown to be wholly to the purpose and necessary in the circumstances of the time, the demands of history have been fulfilled. But if this is

supposed to pass for a general justification of the thing itself, it turns out to be the opposite, because, since those circumstances are no longer present, the institution so far from being justified has by their disappearance lost its meaning and its right. (79)

An example of such a rule which has become obsolete in this way is the former practice, common throughout the ancient world, of killing all the male relatives of a murderer (80). Although such norms may have proved indispensable to a former age, they cannot but appear "superfluous and inappropriate" (81) to the modern era. As well as powerful vested interests, however, religion can also prove to be an impediment to change, since, like language, it tends to reflect and thereby enshrine existing beliefs and values, in such manner as to endow them with a cosmic, universal significance entirely beyond the simple dictates of the time.

With the rise of the mercantile classes, occasioned by the rise of commodity production above the level of the cottage industry and by large-scale lucrative foreign trade, the feudal regime is forceably overthrown. There appears an urban proletariat, driven into the towns both by population growth and by enforced displacement from the land. This movement is described by Marx (82);

To become a free seller of labour-power, who carries his commodity wherever he finds a market, he (the labourer) must further have escaped from the regime of the guilds, their rules for apprentices and journeymen, and the impediments of their labour regulations. Hence, the historical movement which changes the producers into wage-workers, appears, on the one hand, as their emancipation from serfdom and from the fetters of the guilds, and this side alone exists for our bourgeois historians. But, on the other hand, these new freedmen became sellers of themselves only after they had been robbed of all their own means of production, and of all the guarantees of existence afforded by the old feudal arrangements. And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire.

There follows the industrial revolution, which is the

genesis of the ordering which is referred to by Hegel as "civil society" (83), and by Marx as "bourgeois society" (84).

We have seen that in order to be real and absolute, mankind's rise out of the state of nature requires a principle of total society; insofar as society falls short of a single world order, it is self-contradictory, in that it amounts to no more than division at a higher level of refinement. Only uncompromised union can satisfy the highest actualisation of instrumental, objective rationality, and the Kantian requirement of universality. But at the far from perfect stage which is represented and heralded by the advent of the bourgeois nation-state, the artificial volition of the Leviathan is that of a berserk madman; both without, and, as we shall see in chapter 3, within, enstrangement reasserts itself in new and dreadful forms.

As between bourgeois states, the conflict rages on, in a manner which bears echoes of the primeval past, while those communities at inferior phases of economic development, by the general action of evolutionary supercession, fall prey to their more advanced and therefore more powerful neighbours; in this respect, as in others, it seems pertinent to question whether world history is properly conceived of as a progression at all, rather than as a mere cycle of endlessly recurring themes on a rising spiral.

Now, in the place of the individual's self-esteem, there arises nationalism, the peculiar conviction that people hold in the unique destiny and virtue of their own nation or race. And as it is between individuals, where all are intent upon pre-eminence, the necessary consequence is conflict, rendered all the more savage by scale; peace arises only through humility; The division as between states is far from being diminished by the role of indoctrination, distortion of fact and propaganda, a role, it might be added, considered perfectly legitimate and appropriate to the state both by Plato (85) and Hegel (86).

It is this nation state that Hegel bids us worship thus; "The march of God in the World, that is what the state is" (87) and yet, the rationality it affords is imperfect, and its

objectivity is wholly spurious. In fact, whereas Kant in his essay of 1795, Perpetual Peace, (88), looked to international government as the only possible means of abolishing war, Hegel opposed it, as an intolerable limitation on the sovereignty of the so-called ethical universe, the state (89). The inconsistency involved in this position, drawn attention to by Russell, seems undeniable;

This (the preferring of wholes to parts, i.e. the demand for logical and political order) justified him in preferring a State to an anarchic collection of individuals, but it should equally have led him to prefer a world State to an anarchic collection of States. (90)

This contradiction is all the more unacceptable since Hegel's defence of the state involved him in falling back on references to Hobbes' state of nature (91); and certainly, the most prominent causes of war bear a more than passing resemblance to those principal causes of quarrel between individuals identified by Hobbes: "diffidence, competition and glory" (92). Imperfect, relative rationality appears as no more than higher folly.

On the re-assertion of alienation at this higher level, Hobbes himself tells us;

And as small families did then; so now do cities and kingdoms which are but greater families, for their own security enlarge their dominions, upon all pretences of danger, and fear of invasion, or assistance that may be given to invaders, and endeavour as much as they can, to subdue, or weaken their neighbours, by open force, and secret arts, for want of other caution, justly; and are remembered for it in after ages with honour (93)

As with economic competition, war between the bourgeois states is the necessary consequence of the insatiable demands of capital for access to natural resources (94), and of the willingness of the exploiters to sacrifice the exploited on the fields of battle. And yet, the essential factor is that conflict emerges from the joint inefficiency of conduct between states, as a consequence intended by none. Consider in this light the

following remarks made by David Lloyd George, on the subject of World War I;

No-one at the head of affairs quite meant war.
It was something into which they glided, or rather
staggered and stumbled. (95)

It seems highly probable that the idea of war guilt grew out of a failure to understand the realities of competitive interaction. In short, at this stage of World History, the nations stand in the state of nature as between each other. And as it was before,

Men of vision see the imperative necessity for
submerging selfish national feelings in the interest
of a common humanity. (96)

Thus it is that various attempts at the establishment of a new Leviathan come to be made, but by reason of the very nature of the estrangement, these have so far foundered. (97)
In passing, it seems pertinent to observe that an International Law taking the form of normative relations as between states is itself wholly imperfect; while Marx's quasi-Bhuddist views concerning the solubility and artificiality of individualistic motivation (98) remains at the very least, open to question, it is clear that the basic person of this form of International Law, the nation state, is itself an insubstantial illusion, and, as such, entirely soluble. The existence of rights as between states, as opposed to rights and duties between individuals on a world-wide basis, is a contradictory condition of things, and falls far short of the ideal of world order.

Chapter 3: Two Strands of Bourgeois Ideology

"It (the market order) is the only procedure yet discovered in which information widely dispersed among millions of men can be effectively utilised for the benefit of all - and used by assuring to all an individual liberty desirable for itself on ethical grounds." (1)

(i) Introductory

I now turn to consider the liberal theory or conception of justice, whose foundations consist in an individualistic ethic of private property, economic freedom, and equality before the law, and which is the characteristic normative ideology pertaining to the capitalist or bourgeois epoch. This approach is wholly necessary, since it is specifically as the critique or antithesis of this conception of justice that, in the procession of ideologies, socialism arises. It is not therefore possible to reach a theoretical understanding of socialism in isolation from the individualism it negates, any more than, as an example, it would be possible to make sense of Protestant doctrine without first being reasonably clear in one's mind as to the foundations of Roman Catholicism.

Two recent theses serve the presentation and defence of the liberal conception of justice, although these adopt wholly distinct perspectives. They are respectively contained in Professor Robert Nozick's Anarchy, State and Utopia (2), and in the second volume of Professor F.A. Hayek's Law, Legislation and Liberty (3). With each of these I propose to deal in turn.

(ii) Professor Nozick and the Principle of Natural Liberty.

"deductions from presupposed conditions which in themselves may possess no higher validity ... by this means the relative is put in the place of the absolute" (4).

The central concern of Nozick's Anarchy, State and Utopia

consists in an analysis of the nature and proper functions of the state. It is essentially a natural law position, since postulating a criterion of absolute legitimacy extrinsic to the positive order, related to a system of values logically (and in principle historically) preceding social organisation. To this "law of nature", the officers of government are subordinate no less than anyone else, and natural law is envisaged as the source and criterion of the legitimacy of state action. The "state of nature" is discussed here also, but, as we shall see, it connotes for Nozick something not entirely similar to its usage by Hobbes. Indeed, since for Nozick values precede and in no way presuppose social organisation, "state" in "state of nature" may not simply mean "condition", but may arguably be intended to carry the connotation of a normative order.

There can be no mistaking Nozick's natural law position, referring as he does to "those entitlements and rights that most clearly are not socially or institutionally based". (5)

This is especially interesting, since paralleled by the dictum; "natural rights existing in the people prior to the making of any of our constitutions" in Nunemacher v State, (6) an American case of 1906, in which an inheritance tax was struck down as being unconstitutional. The whole of the normative sphere is already contained, it would seem, in the natural law, leaving it only to the positive order (following Blackstone) to determine the "particular conventional details fixed upon in a given society" (7).

In keeping with this approach, he goes on, in a footnote, to express severe misgivings concerning the positivist theory of sovereignty and legitimacy resting upon habitual obedience. (8)

At the root of Nozick's system is the concept of natural liberty; individuals are viewed as being sovereign over themselves, and are therefore conceived of as being at liberty to transact with their fellows as they will, constrained only by the rights of others. (9) This conception of people as "autonomous beings" (10) is crucial to the whole theory, for Nozick sees sovereignty as resting ultimately not in the state, nor even in some relation of social convention to the state, but in the people as individuals. The positivist would assert that as law is the

expression of the sovereign will, where there is no sovereign, there can be no law. (11) But this need not embarrass Nozick, for by his account there is in the state of nature not one, but many sovereigns, each individual being sovereign over himself. This position must be carefully distinguished from that of Rousseau, who considered sovereignty to lie in the "general will" (12) of the people as a whole, so that each individual would possess not the exclusive right to govern himself, but a right to a voice in the process of legislating for all. Unfortunately of course, Rousseau's position is not inconsistent with the legitimacy of a tyranny of the majority.

For Nozick it follows;

The legitimate powers of a protective association are merely the sum of the individual rights that its members or clients transfer to the association. No new rights and powers arise; each right of the association is decomposable without residue into those individual rights held by distinct individuals acting alone in a state of nature. (13)

From the premisses of ownership of self (14), and of the essential alienability of entitlements, follows the permissibility of committing suicide and indeed of selling oneself into slavery (15). This is duly acknowledged by Nozick (16), who holds that the individual may dispose of himself as he pleases, except insofar as he has acquired an obligation to some other to refrain from doing so. In this, he diverges from Kant, who argued from the second formulation of the categorical imperative (17), (by which Nozick, in other contexts, lays great store) to the conclusion that since individuals must be treated as ends in themselves, and not merely as means, and since suicide entails using oneself as a termination of one's own suffering, it is not therefore permissible. But, might not the same argument be used against subjecting oneself to the immediate discomfort of a visit to the dentist, as a means of avoiding the more long-term pain of tooth-ache?

According to this account, property is a projection of

one's self-ownership onto the material sphere, and thus one is entitled to whatever one acquires through the process of free transfer of entitlements with others. It essentially follows that individuals cannot justly be compelled to aid others, unless they have bound themselves so to do. (18)

Nozick's conception of justice is essentially deontological (19), and therefore diverges from any teleological account of moral action, such as that propounded by Professor G.E. Moore in Principia Ethica (20). Nozick claims that morality is concerned not with maximising certain qualities viewed as being good in themselves, but with side constraints on action, these constraints being defined in terms of the rights of others. This outlook is based upon a tailored version of Kant's second formulation of the categorical imperative already referred to, which stipulates that we must treat humanity not simply as means but as ends in themselves. This, incidentally, is a further example of the radically different conclusions from those drawn by Kant which Nozick derives from the categorical imperative; Kant deduced from it a duty of beneficence towards the needy (21) whilst, as we shall see, Nozick's system knows of no such duty. Nozick also diverges in this from his other main influence, John Locke, who wrote of an individual's

title to so much out of another's plenty,
as will keep him from extreme want where
he has no means to subsist otherwise (22)

Thus, Nozick's position is strongly anti-utilitarian not aiming at the greatest happiness of the greatest number, nor for that matter at any other consequentialist outcome. It strongly rejects the idea of the sacrifice of some for others which is implicit in grosser forms of utilitarianism, be the sacrifice one of life, body or property. (23) Thus, tax, or substance "expropriated for reasons of public utility" (24) cannot be justified. For no-one has a right to impose taxes, even if a greater net amount of happiness is the outcome. Essential to Nozick's account is the denial of the corporatist conception of the state; the rights of the state are only those

delegated to it by its subjects, and not vice versa. This position of course stands in direct contrast to Hegel's doctrine of the transformation of quantity into quality (25), in the context of political relationships. It necessarily follows that the rights actually possessed by individuals operate as an absolute limitation on legitimate state action;

What persons may and may not do to one another limits what they may do through the apparatus of a state. (26)

Further, he rejects political motive as a justification (27), and denies that a soldier's responsibility can in any way be delegated to or absolved by the state. Consistently, he rejects the concept of corporate personality, not only of the state, but also of the business enterprise. Rejected also therefore is limited liability, unless specifically written into a firm's contracts with outsiders. (28)

So where, then, do these natural rights come from? It is contended that the second formulation of the categorical imperative demonstrates that the non-permissability of violations of the liberty of others, and the illegitimacy of their use as a means to the happiness of others without their consent, are logically implicit in the concept of morality itself. "Thus we have a promising sketch of an argument from moral form to moral content". (29)

Hence, the story proceeds, from form can be derived a logically necessary minimum content. It would therefore appear that a major part of Nozick's methodology in expounding the substance of the "law of nature" consists in a form of transcendental deduction. It can be demonstrated that the idea of individual entitlements over objects is logically implicit in the very idea of justice in holdings; for if rights over things are not recognised, then it is the case that the system simply refrains from regulating relations between persons and objects, or rather, between persons with regard to objects. If everyone owned everything, the result would be the same as if no-one

owned anything, that is, as if there were no rules relating to property. Further, from the concept of entitlement follows the right to transfer, since logically continuous therewith, and hence gift, barter and sale. In Nozick's terms,

The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realised or attempted. (30)

This follows Kant, who regarded contract as the "alienation of one's substance involved in the very idea of individual rights." (31)

(It diverges from the view of the positivist Kelsen, however, who envisaged the power to create rights in others as being a quasi-legislative right enjoyed by virtue of delegation by the state to the individual (32)). Accordingly, it may be contended, free trade and all that that entails is logically implicit in the very idea of justice in holdings. Also following by logical extension are the concepts of compensation, and so forth, although it is difficult to see how punishment, for example, can be fitted into an account of this sort. This much, it would seem, follows logically from the idea of original sovereignty over self; however very little scope, needless to say, is left for public property, even in such things as roads and highways. (33)

But against this background, can even the minimal state, (that is, a state restricted in its activities to protection against force, theft and fraud, and to the enforcement of contracts (34)) be justified? Nozick set out to establish that it can, although no more extensive arrangement is acceptable. The individual anarchist (35) would point to two features as objectionable; firstly, there is an apparently redistributive element, as the minimal state would have to require some to finance the protection of those who cannot afford to pay for it, and secondly, it claims a monopoly over the legitimate use of force. To allow a word to Bertrand Russell,

John Locke ... devoted much thought to the problem of reconciling the maximum of liberty with the indispensable minimum of government, a problem which his successors in the liberal tradition have been occupied with down to the present day. (36)

To surmount this difficulty, Nozick sets out to prove the legitimacy of the minimal state, that is, to establish that it is not necessarily incompatible with natural liberty. This he sets out to do by focussing upon

what arrangements might be made within a state of nature to deal with these inconveniences (of the state of nature) (37)

Nozick proceeds to trace a hypothetical account of how people might have converged upon the minimal state, through purchasing protection from business enterprises providing such a service. (38) These organisations he refers to as, alternatively, "protective associations" (39) and "protective agencies" (40). I prefer the latter usage, as the key concept would appear to be "agency", that is, the delegation of the power to enforce clients' rights. Market pressures lead people in a given area to converge upon the same agency, so that a de facto monopoly of organised force comes into being. (41). He also demonstrates that the apparently redistributive element of the minimal state, far from involving a breach of the natural law, is actually required by it, in the form of the principle of compensation, as redress for the restriction of people's rights to defend themselves by unreliable procedures. (42) He thus considers that he has refuted the principled objections of the individual anarchist. It must be stressed that Nozick's position opposes compulsory citizenship, and insists that is illegitimate to prevent the individual from enforcing his own rights, without resort to state machinery, or to prevent him from joining or even starting a rival protective agency (43).

A word must be said in this connection concerning Nozick's methodology. He does not of course intend to suggest that anything approximating to his protective agency saga has ever actually occurred in the course of human history. But it becomes clear

that he adopts the procedure of relating stories, such as the tale of the slave (44) as tools of analysis by means of which to illuminate the nature of the relations between individuals in differing modes of social organisation. Thus the protective agency saga serves its explanatory purpose, "even if no actual state ever arose that way" (45)

In the present instance, the purpose is that of analysing the minimal state as a "spontaneous grouping" (46); since the minimal state could have arisen without anyone's rights being violated, in the manner described, it is not intrinsically offensive to natural liberty. It is open, therefore, to doubt whether the minimal state emerges out of the state of nature, thus representing a departure from it, as opposed to existing within it. This is especially pressing if one defines the state of nature as a condition of perfect freedom, within the bounds of the law of nature.

This point is particularly important, since it later becomes clear that as all rights are essentially alienable, it follows that any form of political structure could arise without anyone's rights being violated. It would seem that the crucial difference is that Nozick's account justifying the minimal state does not involve anyone alienating their rights; delegation does not entail alienation. Hence, the more-than-minimal state would require each separate individual to have actually granted the necessary rights over himself.

It is essential to Nozick's view that the principles of justice are historical, not end-state. That is, the justice of a distribution depends not on how possessions are distributed under it - "crying inequalities in the distribution of wealth" (47) - but on how it came about. The objection to equality, therefore, is not based on the belief that there is anything objectionable about it as patterns go, but rather upon the rejection of the imposition of patterns of any sort. The contention is that as all rights are freely transferable, then whatever emerges from a process of voluntary alienations is itself just (48). Consider, incidentally, the protest involved in the name of the "7-84" theatre group.

Later in the book, he extends this principle to the concept of Utopia. The ideal society, he contends, is not predetermined by

any end-state distributional profile, but is whatever people freely choose to live in.

The Utopian process is substituted for the Utopian end state or other static theories of Utopias. (49)

He points out that if a given kind of society was in any meaningful sense the best possible, then the practice of coercing people to live in it would be unnecessary and superfluous; and in any case, it is only within the framework of free association that the fraternal feeling, which is so much depended upon by socialists and other Utopian thinkers, could flourish. The ideal society would have to be discovered by means of the evolutionary filter process of trial and rejection. (50) So by this route he once more reaches the conclusion that the criterion of political justice lies in the principle of voluntary association. Once more, he echoes Kant;

the touchstone of everything that can be concluded as a law for a people lies in the question whether the people could have imposed such a law on itself (51).

It follows from this that the same, not separate principles of justice govern both micro and macro situations, that is, both situations writ small and writ large (52). This gives rise to one of the more important weapons in Nozick's armoury, that is, the device of testing possible principles of justice in hypothetical micro-situations. If it were otherwise, there would be little basis for arguing from analogy, or indeed principles at all.

Accordingly, the concept of justice in holdings can be resolved into three principles - acquisition, transfer and rectification. The criterion for whether an object is justly held, that is, owned, is in all cases that of whether it was legitimately appropriated by its original owner, and whether entitlement can be traced back to him through an uninterrupted series of voluntary transfers.

No-one is entitled to a holding except by (repeated) applications of the principle of justice in acquisition and the principle of justice in transfer. (53)

The principle of rectification is required exclusively where this has gone wrong, that is, where there has been a violation of an entitlement, such as an act of theft. Thus, the legitimate operation of the state apparatus is restricted to rectification. It is not needed for the achievement but merely the maintenance of distributive justice, since this arises spontaneously. It follows from this that in the absence of improper inducement to contract, such as blackmail or direct coercion, there will be no element of exploitation. The just distribution of the benefits of exchange rests not upon what the distribution is, but upon its having been freely assented to, aggregatively, as it were, through the myriad exchanges which are entered into by particular transacting individuals. Nozick's thesis discloses no conception of just price other than the formal criterion of what is actually agreed upon, and advocates "market determination of the mutual benefits of exchange" (54).

Against Marx's thesis that the seemingly free transactions of civil society serve only to mask a process of exploitation that is "naked, shameless, direct, brutal" (55), even as compared to that of feudalism, it is Nozick's position that there is no entitlement to be in a position of equal bargaining strength. Thus a contract is still voluntary, even if the employee is "faced with working or starving" (56).

He further denies the Marxian concept of economic exploitation by pointing out that, in terms of Marx's analysis, (57), "there will be exploitation in any society in which investment takes place for a greater future product" (or even to maintain existing machinery) ... "and in any society in which those unable to work, or to work productively, are subsidised by the labour of others." (58)

It would appear from Nozick's account, however, that there is nothing illegitimate in the fact of workers combining in order to enhance their overall bargain power. He refers to "groups of workers first reaching some joint agreement and then presenting a package to an entrepreneur" (59). He also states, "A group of us may band together" (60).

By the same argument however, neither would there be any breach of the law of nature should employers or retailers form a cartel to depress wages or to force up prices.

It is as well to point out here the distinction that Nozick draws between desert and entitlement; justice depends solely on the latter. It follows that the justice of a transfer, contrary to common assumption, has nothing to do with the moral desert of the recipient, but rests upon the entitlement of the donor.

Any person may give to anyone else any holding he is entitled to, independently of whether the recipient morally deserves to be the recipient. (61)

He rejects the notion that entitlement disappears or is reduced above a certain level of wealth, or over profits from investment of capital. In this connection consider the system of graduated taxation, and the distinction drawn by British tax law as between "earned" and "unearned" income (62). It is partly on this ground that Nozick opposes Rawls, since Rawls contends that

shares stem from differential natural endowments, which are not deserved, and that the task of justice is to rectify these arbitrary facts and inequalities (63)

Thus Rawls conceives it to be the specific purpose of distributive justice is to nullify all accidents of natural endowment and social circumstance.

Nozick, who also denies Rawls' postulate that social co-operation creates the problem of distributive justice, (63) counters with the principle that entitlement resting upon ownership of self is the sole criterion of justice, and that to this question, moral desert is irrelevant.

Whether or not people's natural assets are arbitrary from a moral point of view they are entitled to them, and to what flows from them (64)

Further, Nozick doubts that once the individual has been denuded of his various personal attributes, any intelligible semblance of personality remains, and therefore he also doubts the basis of

the distinction drawn between people and their natural endowments. (65).

In Nozick's theory, free trade emerges as the logically indispensable minimum content of justice in holdings, implied in the very concept of entitlement. As I have pointed out, Nozick acknowledges no substantive conception of just price, and this removes the possibility of "wage/price control" (66), (and also import control), since on this view regulation in the context of rents amounts to "the partial expropriation of the owner" (67).

(Consider in this light the Succession (Scotland) Act 1964, which restricts the testator's freedom to dispose of his property by entrenching provision for the testator's relict and progeny. Does this constitute the partial expropriation of the deceased?)

In Legal Values in Western Society (68), by Peter Stein and John Shand, steps to "preserve health, or safety standards, or where fair rents or minimum wages are fixed by statute" are cited as examples of the mediative capacity of government. This is in direct contradiction to Nozick's position which holds such action to amount to asymmetric intervention on behalf of one or other of the parties. As Nozick points out, the practical consequence of such legislation is that certain transactions between individuals, even where no third party interests are affected, are forbidden. "The socialist society would have to forbid capitalist acts between consenting adults" (69). This view is apparently vindicated by Marx himself, in the phrase, "The Communistic abolition of buying and selling" (70). A scrutiny of modern British legislation reveals abundant instances. Thus, for example, under the Consumer Credit Act 1974 and the Rent Acts, there are a number of provisions which we cannot omit from our contract, once we have decided to enter into it, and under the Unfair Contract Terms Act 1977, there is an indeterminate number of provisions which we cannot lawfully put in.

At the same time as being a theory of distributive justice, in the broad sense, the "entitlement theory" (71) undercuts the concept of distributive justice, in the narrow sense, by denying that any organised process of distribution should take place at all. "The term Distributive Justice is not a neutral one" (72) in that it implies and presupposes central distribution of a supply of goods.

(The converse, "contributive justice" (73) is equally inapplicable to Nozick's system). The entitlement theory is a natural law theory in the further important respect that it upholds the distribution which spontaneously arises, as opposed to that which is brought about by conscious direction.

Nozick's account of natural law largely depends upon arguing from form to content, and there follows from this the concept of the tension between formal and substantial equality. Nozick, like Professor Unger (74), is quick to point out that the imposition of substantial equality, far from treating people equally or fairly, entails an abandonment of neutrality as between the well-off and the not so well-off. "Whence" he asks, "the asymmetry?" (75). (Formal equality, it should be pointed out, is not an end-state (76) principle, whereas substantial equality is).

According to this analysis,

Taxation of earnings is on a par with forced labour ... it is like forcing the person to work ... for another's purpose (77)

Thus, contrary to the Marxian position that bourgeois society simply replaces feudalism with an alternative mode of expropriation of the mass of the people, and that this finally ends with the coming of socialism, according to Nozick's analysis, socialism involves a regression to feudalism, with some (i.e. the less well endowed) occupying

privileged positions based upon illegitimate interventions directly or through government, into other people's lives (78)

Much the same might be said of state expropriation from the benefits of exchange, as by Capital Gains Tax, and Value Added Tax.

He also observes that the means of production which "others have saved to bring into existence", (79) or what amounts to the same thing, capital, is not absolutely different as an object of property from revenue, and that

private property even in the means of production would occur in a socialist society that did not forbid people to use as they wished some of the resources they are given under the socialist distribution. (80)

Continuing his scrutiny of the various concepts central to left-wing positions, and their subsequent rejection, he considers the various general rights which are frequently insisted upon, that is the right to work, equality of opportunity, the right to education, medical aid and so on. He rejects these on the grounds of their inconsistency with the substructure of particular entitlements over specific objects.

No rights exist in conflict with the substructure of particular rights. Since no neatly contoured right to achieve a goal will avoid incompatibility with this substructure, no such rights exist. The particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition (81)

A similar treatment is given to alienation, meaningless work, and to workers' control. The first two of these categories, he observes, have no necessary connection with capitalism, but seem to be a problem of industrialised society generally. (82) The last, he demonstrates, may well be incompatible with socialism;

Since a system of syndicalist factories would involve great inequalities of income among workers in different factories (with different amounts of capital per worker and different profitability), it is difficult to see why people who favour certain egalitarian end-state patterns think this a suitable realisation of their vision. (83)

A similar thought is expressed by Professor T. D. Campbell;

The idea of workers' control in each unit of production is not a socialist conception since it simply transfers the notion of the (private) ownership of the means of production from one group to another. (84)

It is not, however, incompatible with capitalism. Trade

Unions now have considerable wealth at their disposal - Donaldson estimates reserves belonging to British Unions at £120,000,000 (85); there is nothing to prevent them from financing democratically-run worker controlled factories. So why, Nozick asks, do they not do so?

It is too easy to dwell exclusively upon the right-wing implications of the entitlement theory; but in other respects it is positively radical. Nozick also opposes himself to conscription (86), the prohibition of the use of drugs, and the restriction of permitted sexual activity.

Similarly, the practice of compelling jurors and witnesses, (87), and the curtailment of the liberty to transact with whom one wishes - discriminating if one so desires on grounds of race, religion or sex (88) - are both rejected.

The most radical feature of the entitlement theory consists in that it cannot be slotted into any standard political pigeon-hole, but rather presents a fundamental challenge to each and every established position. Its greatest attraction consists in that it scrutinises the articles of faith of the day; in a penetrating analysis, even democracy is called into question. For, just as the entitlement theory is a theory of distributive justice which at the same time calls the concept of distributive justice into question, it is also a political theory which undercuts the realm of politics. (89) The concept of democracy appears to presuppose the more-than-minimal state; the minimal state that does no more than protect people from violence, theft and fraud, and enforce contracts, does not involve government in any political sense. Apart from those decisions that particular persons are entitled to make by virtue of entitlement over self or property,

it is not clear that there are any decisions remaining about which even to raise the question of whether I have a right to a say in those that importantly affect me.
(90)

It is, after all, the rights of the individual that are being defended, be it against a one-headed or a myriad-headed master. To live in a perfect democracy is to have a part-share in the decision of how much of each individual's property to appropriate, and on what to spend it, and to have everyone else

hold and exercise reciprocal claims over oneself. Democracy is collectivism, with the institution of property qualifications on voting rights (91) forming an intermediate stage in the transition from private property. The right to control is the right to own; both can equally be subsumed under the concept of "dominium" (92)

This tension between private property, on the one hand, and democracy on the other, was well illustrated in the case of Regina v The Greater London Council, ex parte Bromley London Borough Council (93), in which there was contested the legitimacy of a subsidised travel scheme, notwithstanding that this had been implemented in fulfilment of an election promise. Lord Denning, then the Master of the Rolls, construed the relevant legislation to decide in favour of private property, and issued the following dictum;

A manifesto issued by a political party in order to get votes (is) not to be regarded as a gospel. It (is) not a covenant. (94)

Via the entitlement theory, then, the distinction between distributive and political justice collapses, and are one, as does the division between private and public law, since precisely the same principles fall to be applied as between individuals, and as between the individual and the state.

To Nozick's theory, however, there are a great many objections. I am greatly aided in this connection by Professor Nozick himself, as a persuasive and substantial critique might be constructed on the strength of his professed misgivings alone. These objections centre largely upon the question of the nature and status of moral norms. (95) Nozick assumes these to be objectively valid, in no way dependent upon general acceptance, and thus to be a part of the world in much the same way as are physical facts. But science, in its scrutiny of the natural environment, discloses only facts, not values; how then, if the norms of justice do indeed have this status, can they be discovered, and their substance be known?

It is clear that such values cannot be discovered by empirical investigation, and thus Nozick is thrown at times, by his naturalism, upon naked assertion and at others upon a

neo-Kantian attempt to show certain norms to be somehow contained in the recesses of the fabric of reason itself. As a consequence, he appears to attribute more importance to the rights thus unearthed than to the interests they protect. Thus, although there is a right to life in the negative sense that none are permitted to murder, there is no necessary right to the essential means of support. Of need he says, "I reject the criterion of justice which includes it" (96).

In this connection, it is tempting to speculate whether, if tomorrow there was to be discovered, with conclusive certainty an objectively valid set of moral norms having no necessary connection with human wellbeing, it would be of the slightest importance to any living creature, and whether there would be any point whatsoever in rendering allegiance to it.

Nozick fails to consider - indeed, he abdicates responsibility for the task - whether the side constraints derived from rights are absolute. "The question of whether these side-constraints are absolute ... is one I hope largely to avoid." (97)

It is as well to have resort to Nozick's own device of trying out principles in hypothetical microsituations. May not casks belonging to another be thrown overboard to save a sinking ship? And consider the following. Suppose you are in company with two men, one of whom falls ill, and you know that his life can only be saved if he can be taken to hospital, and that the only means of doing so is to drive him there in the motor car belonging to the third man, which he withholds. (As he is perfectly entitled to do, by Nozick's account, in the absence of any contractual obligation to the contrary.) Would you not be justified in employing your superior force to requisition the car for this essential purpose?

It is also interesting to speculate whether, if Nozick's thesis is correct, entitlements are exhaustive of the whole field of moral philosophy. Is there nothing more that might be said? Consider in this light the case of the Mayor of Bradford v Pickles (98), in which it was said by Lord MacNaughten concerning a land-owner who drained his lands, for no other purpose than to deprive

a nearby community of its water supply, "He may be churlish, selfish and grasping. His conduct may seem shocking to a moral philosopher". (99)

And yet, the landlord was held to be acting within his rights as delineated by his property entitlements (100), and so the court found in his favour. Might it therefore be said, by way of conjecture, that there are moral duties of a weaker, and non-juridical, nature, not creative of corresponding rights in others?

All of which brings us face to face with the question of the status of property rights. Can they really be a part of the natural order, and absolute, or are they merely rules adopted as a device for the promotion of human prosperity, and, by extension, in some way subordinate thereto?

There is an important respect in which Nozick's thesis does not appear to be a theory of justice at all, insofar as, at his own admission, he argues not for but from a certain set of values, based upon the assumed ownership of self.

The completely accurate statement of the moral background, including the precise statement of the moral theory and its underlying basis, would require a full-scale presentation and is a task for another time. (A lifetime?) That task is so crucial, the gap left without its accomplishment so yawning, that it is only a minor comfort to note that we are following the respectable tradition of Locke, who does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his Second Treatise. (101)

All of which would seem to be a euphemism⁶ for the fact that the norms of "natural law" are all simply assumed or fabricated. Nozick would appear not even to be attempting to present a complete system.

Not inconsistently with this intuitive approach, there would even seem to be illicit jumps from description to evaluation. For instance, "There are different individuals with separate lives, and so no-one may be sacrificed for others." (102)

Without further argument, Nozick's "entitlements" can never advance beyond the level of unsupported value judgements.

Nozick bases his system upon man's alleged natural liberty. (103)

But many, as we saw in chapter 2, for example Hobbes and Hegel, have denied that man is by nature in a condition of freedom (unless in the spurious sense which implies no more than absence of obligation. This form, in which freedom most immediately and abstractly presents itself, was not of course taken very seriously either by Hobbes or by Hegel) and have asserted that it is only by means of an elaborate social organisation that man's freedom is made real.

Nozick's consideration of the inconveniences of the state of nature does not go far enough; far from it being the case that it is difficult to enforce one's rights, the specific defect consists in that there are no rights, only interests that go almost entirely unfulfilled. In the words of Hobbes,

They (justice and injustice) are qualities that relate to men in society, not in solitude. It is consequent also to the same condition, that there be no propriety, no dominion, no mine and thine distinct; but only that to every man's that he can get; and for so long as he can keep it. (104)

The state of nature is, both in the sense in which the term is used by Hobbes, and in the sense in which it is used by Nozick, the negation of the political state; it is also, as I have argued (105) on the basis of the Hobbesian model outlined in chapter 2, the effective negation of society. As such, it consists in the radical separation of man from man, manifested in the opposition of the general to the immediate individual interest. It entails an antagonism

not in the sense of individual antagonisms, but of conflict arising from conditions surrounding the lives of individuals (106)

That is, the "war of all against all" (107), which is consequent upon this separation, does not consist simply in the hostile mental attitudes of the particular combatants, but is an alienation founded in prevailing external circumstances.

they must needs by the difference of their interests dissolve, and fall again into a war among themselves (108)

Nor is it the meek that in this condition of things inherit; as I argued in chapter 2 (109), given the tendency of all benefits to drift towards the aggressor, there comes a point of non-compliance at which behaviour enjoined by the norms of Nozick's system of "natural law" becomes no more than an act of spectacular self-sacrifice; and hence a vicious circle is established. And no man, according to Hobbes, (110) is bound to actions which conduce to his own destruction. It is a flaw of Nozick's system that in moral evaluation he emphasizes the right of the person acted upon, rather than the duty of the person acting; this leads him into difficulty in another context when he is confronted with the problem of determining what right of a person who is guilty of a criminal act is violated when he is denied a fair trial.

Where there is no society, there are no values. It will be recalled that in chapter 1 (iii) I contended that traditional presentations of theories of natural law, such as Nozick's, and of positive law, such as that of Kelsen, are incurably onesided, and that the reality lies in a synthesis which resolves the basic elements of each system. Thus I argued that law and morality are essentially positive, but that precisely because of this, it is possible to objectively establish the criterion by which values are themselves to be evaluated, and hence, the absolute system of values. Taking the positivist aspect of this position, it would seem to follow that the whole question of whether social organisation is justified is misconceived. Law and social organisation are one, neither is conceivable without the other. And after all, the absolute system of norms can scarcely be the one which renders itself impossible, and thus falls into self-contradiction. (112)

Thus the protective agency saga is wholly superfluous. It may serve to drive the assault home, to point out that it doesn't even serve Nozick's purpose anyway. For why must compensation be paid for prohibiting procedures that may not be used anyhow? (Remember in this connection that an individual may protect himself, provided reliable procedures for determining the guilt are used). Therefore, Nozick's justification for the redistributive element of the minimal state, that obliges the strong to finance the protection of the entitlements of the weak, fails. If Nozick seriously wishes to retain a conception of justice which exclusively contains such

norms as generally fall within the province of private law, then it would appear that the only course open to him is to advocate reliance upon a system of self-help courts such as that which flourished in ancient Rome. (113) In all this, we come to perceive the essential inhumanity of Nozick's system, in terms of which the physically disabled being left to fend for themselves would be by no means in breach of "natural law".

But who will guard the guards themselves? Who will protect the people from their protective agency, should it exceed the legitimate functions? (Unless one envisages an infinite regression of protective agencies, each one stronger than the last). Again, I can lay no claim to original discovery, since once more I am pre-empted by Nozick himself.

I ignore here the difficult and important problem of the controls on a central authority powerful enough to perform its legitimate functions. (114)

This failure is particularly ironic, as the whole question of natural law and natural rights (and to this Nozick's thesis is far from being an exception) appears to have grown out of the problem of what rulers may and may not do to their subjects. This only goes to confirm that only on a level of social organisation by no means attained by the minimal state can man's liberty be realised.

However, even if we accept Nozick's reasoning thus far, we now encounter a serious impasse; for it is by no means clear how this dominion over self which is so strenuously defended can find its extension onto the sphere of material objects. On this view, it is difficult to see how Nozick's theories as thus far expounded can entail the conception of justice in holdings which he seeks to advance, or, indeed, any such conception. At best, it would seem to provide a basis for a system of rules which does no more than relate to deliberate personal injury. On this point, Nozick has singularly little to say. One of his three formal categories of justice in holdings is the principle of justice in acquisition, but he entirely fails to formulate a substantive principle of original acquisition by means of which one might come to hold over a hitherto unowned and exclusive, and, on Nozick's terms, natural "permanent

bequeathable right" (115)

He issues a few pronouncements on the matter of original acquisition, but nowhere even attempts to formulate a substantive principle of his own. He includes a consideration of Locke's theory, but only to subject it to fundamental criticism, and he decisively, and, to my mind, correctly, rejects it as inadequate. This failure is absolutely crucial; for how, in Nozick's scheme of things, can natural rights over particular objects be transferred until first they come into being (116)? How would one acquire title to land? It is surely a juristic fiction that "staking a claim" in any shape or form confers a right to land "a caelo usque ad centrum" (117), and this independently of institutional recognition.

Marx himself expresses grave dissatisfaction with this Lockean principle of original acquisition;

This primitive accumulation (the doctrine of original acquisition) plays in Political Economy about the same part as original sin in theology (118)

and further stigmatises it not merely as a fiction, but also as an "insipid childishness" (118).

Nozick's theory, it would seem, presents us with an elaborate structure, but one which is shaky at the foundations. There is a serious danger of circularity in Nozick's argument, for if he is proceeding from the assumption that there is indeed some natural procedure by means of which can come to acquire original, natural rights of property over particular objects, then insofar as the rest of his thesis is concerned merely to articulate what is already implicit in the nature of the right thus presumed to exist, his conclusions, (insofar as they purport to go beyond simple conceptual analysis), lose all value, since the line of reasoning on which they rest is tautologous.

There is here at least one fallacy which requires to be laid to rest. Nozick employs the expression "causes to exist, or produces" (119). But this is a misconception. Labour does not create objects, or at any rate the material contained in them, the total quantity of which remains precisely constant, no matter what changes in quality take place, and no matter how much labour, (productive or otherwise), is expended. Production, then, is an

entirely different matter from creation, and it is only by confusing the two that a natural law of original acquisition, and with, the claim attributed to Locke and Nozick by J. L. Mackie

that there is a natural law of property, that we can decide independently of any positive law or positive morality, that there is a way in which a man can legitimately acquire property to which he then has a right (120),

is made to seem plausible. "Things come into the world already attached to people having entitlements over them" (121) This is plain nonsense. What of the mass of natural resources, the existence of which, in the case of minerals wholly predates man's appearance on the earth? Materials are not in any sense brought into existence by human activity, they are merely transported or transformed.

However, lest I appear to reject the possibility of a natural law of original acquisition out of hand, might it not be countered that while labour is not creative of physical objects, it is creative of economic value? And, against a background of unlimited natural resources, the total economic value of an object would be wholly attributable to the labour expended on it. This in fact is the situation envisaged by Locke's proviso (122) according to which original acquisition is legitimate only where there is enough and as good left over for everyone else. But it is clear that in practice this proviso can be satisfied only under exceptional conditions. (And does this mean that scarce resources could not be appropriated at all?) And, according to Mackie,

If we are thinking of the acquisition of land, it can be satisfied only where there is an indefinitely extensible frontier. (123)

Further, it would seem that some variant on Malthus's population principle (124) would tend to ensure that the non-scarcity of natural resources such as land, and therefore the applicability of the Lockean proviso, would be an abnormal, temporary condition of things. Mackie also makes the point that even when the proviso is satisfied, the claim to permanence is extremely dubious,

since later the proviso may cease to be satisfied.

And there are cases where uncurtailed appropriation does not merely leave less for others, but in fact drastically reduces the existing stock, as it is for example, with over-fishing (ignoring here the complication that fish are not inanimate objects). It would appear, incidentally, that Locke's theory rests upon an equivocation of "right" in the strong sense, which denoted exclusive dominion, and in the weak sense, which simply denotes an absence of contrary duty; and upon a similar equivocation of "possession" in the normative and purely physical senses. Consider the following dictum, quoted by Nozick with apparent approbation; "The bounds of the law of nature require that no-one ought to harm another in his life, health, liberty and possessions." (125) Clearly this cannot mean "possession" in the purely physical sense, as a thief possesses the article he has stolen. But, if this conception of natural law presupposes rather than underlies a system of property entitlement, then a somewhat gross form of circularity is involved.

If these comments of mine concerning original acquisition are not misconceived, then it would seem that the impasse to which I draw attention is fatal to Nozick's theory of a natural system of property rights. But, paradoxically, it is here that we come to perceive the positive strength and value of Nozick's work. For this theoretical difficulty comes to light precisely because Nozick seeks to reduce this major strand of bourgeois normative ideology to a coherent essence. Only in such a logically pure form can the characteristic inner limitations of a conception become clear, instead of lurking undetected amongst eulogies and confusions of thought.

Like Socrates, Nozick shows common moral outlooks to be confused and incoherent. Actual history does not present us with conceptions of justice in any pure form; rather it is the task of the moral philosopher to extract particular formally coherent conceptions (126) from the impure admixtures of the real world. Only when the conception is thus presented to us as an object of thought or cognition can it be subjected to evaluation, whether positive or otherwise, and only then can its conceptual limitations emerge. It is at this phase in the development of the Idea, that the conception comes into contradiction with itself, and is thereby abrogated.

It is, no doubt to be regretted, however, that Nozick sacrifices logical consistency to common sense, by attempting to incorporate into his scheme of things such elements as punishment (127), and the concepts of public interest and organisation surely implied thereby, which are essentially alien to it.

If there is no way in which a natural, exclusive, objectively valid right of property may be originally acquired, neither can such acquisition be derivative. What then remains of the principle of justice in transfer? De facto inequalities in bargaining power operate to ensure that in civil society almost all benefits of exchange accrue exclusively to the rich. Civil society treats us as equals, but in view of "the subordination that exists in reality" (128), or to use Nozick's own expression, "commanding market positions" (129), is not, "the redress of such imbalance and relief from its consequences" (130) a proper and indeed necessary function of government? It is ironic that Nozick attaches so much importance to Adam Smith's invisible hand mechanism (131), for it also deeply impressed Marx, who based on it his idea of the material forces which underlie and motivate economic and therefore social development, leading eventually to the impoverishment of the vast mass of the people, followed by the collapse of the circumstances giving rise to the value on which civil society is based. (132) In this connection, it seems pertinent to enquire whether the end-state can be irrelevant after all. On the contrary, the pattern and magnitude of the distribution realised, that is, how a principle works out writ large, would seem to be one of the rational bases on which it might be preferred to or rejected (133) in favour of another; and certainly, it would seem that the values which Nozick espouses cannot be in any sense natural and eternal, if we are persuaded of the truth of Marx's contention that their appearance is limited to a single transitory phase of social development. (134)

And what of the property speculators, ticket touters, and hoarders, who perform no useful function, but simply manipulate the market, by artificially generating scarcities, for their own enrichment? Such activities have the tendency of inflating prices, to the advantage of no-one but the speculators themselves. And are we to take seriously the contention that the rationing of scarce resources, for example in wartime, is against the law of nature?

The essence of Nozick's thesis lies in the assertion that in the absence of contractual provisions to the contrary, there is no duty to render aid to others. (That it follows from this that taxation for redistributive purposes is not permissible is not a very remarkable conclusion.) One major difficulty arising in this respect is that it is far from clear how a child's right to be provided for fits in, recalling here of course Nozick's contention that particular entitlements over things exhaust the field of rights (135). It would seem, however, from Nozick's various remarks about the institution of the family (136), that the non-authenticity of this right is a conclusion that he would be most reluctant to reach. In his consideration of Locke's position on this, he appears to imply that the duty to care for children rests upon having voluntarily brought them into being (137). But, quite apart from the "is" to "ought" jump, what of orphans and foundlings?

The entitlement theory protests its unlimited concern for the individual, "the minimal state regards us as inviolate individuals" (138) and yet it is indifferent to the paradox of poverty amidst plenty. Moral values are brought into the world as a remedy for the separation of man from man, but as shall become progressively clearer in the course of this present work, it is this radical separation that Nozick's system of "natural law" is based upon, and indeed seeks to sanctify.

(iii) Professor Hayek's Spontaneous Order.

The New Right ... (is) putting forward ideas ... so long discredited that their resurrection may indeed seem novel to some. (139)

Although to a considerable degree concurring with Nozick in his defence of a society having its foundation in private property ideals, Hayek reaches his conclusions by means of an entirely different route. Hayek adopts as his starting point not a system of alleged natural rights, but rather the role which justice, according to Hayek, plays in human affairs, that is, the preservation of a spontaneous order, within which individuals are able to pursue their own several ends, without unduly colliding with one another in

their actions. One major divergence from Nozick attributable to this distinction in methodology is that Hayek is not unduly concerned to vindicate state activity, but without argument acknowledges the legitimacy of government provision for the maintenance of law and order, that is the enforcement of individual obligation, both civil and criminal, and also for certain genuinely collective needs which of their nature cannot be satisfied by the market. (140) Accordingly, unlike Nozick, he does not consider taxation as unjust in itself, so long as benefits which an individual derives from public funds are not grossly disproportionate to his contribution (141).

Further, there requires to be borne in mind one systematic limitation to Hayek's thesis which is attributable to this difference in methodology. He does not proffer a theory or conception of justice in the strong sense of putting forward such precepts as will enable us, independently of any particular positive order, to determine in any concrete situation who is entitled to what, as Nozick's theory would have done, had he managed to advance a substantive principle of original acquisition. At most, he offers only a conception of justice in the weak sense of arguing in favour of a particular type of legal or moral order, as the normative corollary of his favoured economic system. In contrast with Nozick, then, his work would appear to proceed from a tacit agreement with Mackie's contention that;

there is no natural law of property; but there is at least in Hobbes's sense a natural law that there should be some law of property. (142)

Initial holdings, then, in Hayek's scheme, would have to be determined in an arbitrary fashion. The same charge, of course, stands to be levelled against Nozick's system, until he can furnish us with a substantive principle of original acquisition.

In common with Nozick, (as the subtitle given to volume 2, The Mirage of Social Justice, indicates), a dominant theme is the decisive rejection of any conception of "distributive" or "social" justice; for Hayek, justice is essentially an attribute of the manner in which competitive interaction is carried on, and not of the results thereof, whether in the particular transaction, or writ large. That is, justice as Hayek conceives of it is essentially a

principle of human conduct, (143), so that only the individual as a knowing, acting subject, and thereby in principle capable of being the bearer of rights and obligations, or aggregates of such persons acting in concert, can meaningfully be said to act justly or otherwise. Society, as opposed to government, is clearly not such an entity (144); the total outcome of the social process can be desirable or undesirable, good or bad, but never just or unjust. He therefore considers "social justice" a meaningless concept, belonging not to the category of error, but of nonsense, and to be a dangerous illusion at that, since tending to fall into the service of organised interests in imposing their demands upon their fellows. (145)

Further, still in consensus with Nozick, he demonstrates that rights to be in particular conditions, for example to be engaged in remunerative employment, are irreconcilable with (process) entitlements under justice so called, that is, justice as an ordering of constraints on personal action. It is on this ground that he repudiates what he considers to be the pompous catalogue of social and economic or human rights. Universal, general rights are abstract and formal, and only particular entitlements acquired under these can be substantive. It is therefore left to the free individuals

to create their own protected domain(s) ... the rules do not confer (substantive) rights on particular persons, but lay down the conditions under which such rights can be acquired. (146)

Hayek's conception of ethical freedom consists of liberty in the classical sense, in terms of which individuals are permitted to pursue their own several aims and objectives, constrained only in the means by which they are allowed to do so. These constraints, taking the form of universal, general rules are "almost all negative in the sense that they prohibit rather than enjoin particular kinds of action" (147) and belong of course to the traditional private law foundations of private property, civil wrong, and contract. Hayek goes on to point out that principles purporting to govern the actual outcomes of the distribution of material goods and burdens can only pertain to an organisational or corporate social structure (or teleocracy), in which the private law regulating relations between individuals has been wholly supplanted by the public law which delineates relations between individual and state, and not to

the spontaneous order, (or nomocracy) in which there is no hierarchy of social ends binding upon its members. (148) The rules of justice, then, do not have a purpose, in the sense of aiming at any specific ordering of things, but rather possess a function in that they seek to conserve the sorts of conditions which form "the precondition for the success of most private activity" (149) Thus, civil society, or to use Hayek's term of art, the Great Society, is a means-directed, abstract society, unlike the ends-directed tribal unit, corporation, or totalitarian state, in which all the members share, or have imposed upon them, the same common visible purposes.

Insofar as the several members of society are obliged to pursue the same objectives, society ceases to be free. Thus Hayek holds that the demand for "social justice" and the shared visible purposes implicit therein is no more than a regression to tribal social forms; before the rise of the Great Society, men are divided up into small face-to-face communities, in which the pursuit of common purposes is both viable and appropriate, and, more importantly, spontaneous, whilst at the same time, as between these tribal units, a condition of anarchy prevails. (150)

However,

the transition from the small group to the Great or Open Society - and the treatment of every other person as a human being rather than as a known friend or an enemy - requires a reduction of the range of duties we owe to all others (151)

This application of universal rules of conduct to all men, Hayek considers to be the major achievement in the development of human society, making possible the spontaneous order in which men can live in peace and to their common advantage without the necessity of reaching a consensus on concrete ends. (This of course directly contrasts with Marx's view that in civil society men find in one another not the realisation but the limitation of their freedom (152)). And this condition of things, so Hayek apparently claims (153), is sufficient to resolve the tension between the individual and the general interest, the overcoming of which was earlier identified as the specific role of the institution of legality. Within the spontaneous order, people find that the realisation of their separate ends lies in correctly responding to the "signals"

generated by the market process. By following these, as movements in prices, wages, returns to capital and so forth, the individual is led to direct his efforts and resources towards the most generally desired purposes; in other words, it is argued that within the Great Society based on liberty and economic freedom, the pursuit of self-interest constrained by the rules of just conduct alone automatically tends to the advantage not only of the immediate actor, but of large numbers of other persons, connected only by their participation in the Great Society. (154)

Thus, the price mechanism, motivated by the spontaneous movements of supply and demand, renders a complex central planning apparatus wholly superfluous. The decisions as to what is to be produced, with what, for whom, and in what quantities are resolved automatically; the market process itself is claimed to be adequate for the co-ordination of the separate activities and strivings of large numbers of otherwise unconnected agents. For example, if a commodity becomes scarce, supply will diminish, and the price will rise as a result. People will then cut back on their consumption of this commodity, perhaps switching to an alternative which is more easily produced, this adjustment directed by reason, but made through the automatic and unconscious workings of the market process. Thus Hayek writes that the market is the only sure means to the utilisation of information scattered amongst myriad individual agents. (155) It follows for Hayek that state intervention in economic affairs, except, perhaps, with a view to maintaining a competitive economy against monopoly (156), is not merely superfluous, but positively damaging, in that such activity disrupts and misdirects the market process; if, by means of subsidies, the government brings about conditions in which the price of a commodity no longer faithfully reflects the spontaneous interaction of supply and demand, the price mechanism no longer functions correctly, and has to be replaced.

Hayek's advocacy of "a system which relies on the spontaneous ordering forces of the market " (157) is, in the final analysis, a re-iteration of the "invisible hand" (158) doctrine, venerated by the exponents of classical political economy, according to which the free operation of the profit motive is by itself (operating of course within the context of the rule of law, and military security) sufficient to ensure economic efficiency and stability. And it was

these same ideas which Marx criticised (159) 'as proceeding from a mistaken view of the bourgeois economy and accompanying social structure as being static and unchanging, rather than as something constantly moving, according to its own inherent laws of emergence, development, and decline. (160) And it is in this development that the true nature of the impersonal forces and processes occasioned by competitive interaction becomes ever more evident. They are not, after all, part of a mysterious providence, but rather, as the products of blind interaction, they represent a further self-reassertion of the category of nature, as pure being. As it was with nature as it originally presented itself (161), and as it was with the processes arising out of unconstrained interaction (162), interaction constrained only by the rules of just conduct, in the form in which these are advanced by Nozick and Hayek, gives rise to a random mix of processes, some of which chance to accord with human purposes, and some of which do not. Nor are the outcomes of these processes necessarily intended or even foreseen by any of the individual agents involved. (163)

As the growth of industry comes to demand and depend upon ever more large scale investment, and production comes to be conducted by means of ever more complex and costly machinery, that is, becomes more capital intensive, the economic process grows progressively more unstable, since greater and greater dislocations come to be attendant upon the failure of individual business enterprises. And as the size of the average business unit grows ever larger, so in proportion does the extent of the disruption caused increase when one of these collapses.

In fact, with the advent of advanced capitalism, the "signals" generated by the market order come to be progressively more inadequate and misleading as directors of economic activity. Thus, for example, in recession conditions, which are induced by the "gradually widening circles of unemployment, with accompanying diminution of demand" (164) brought about by the collapse of business ventures, as described above, it is demonstrably unwise, from the subjective point of view, for any individual to invest capital, although this is precisely what the general prosperity requires. In short, "Dread of disaster makes everyone act in the very way that increases the disaster" (165).

Of all the phenomena summoned forth by unrestrained economic interaction, perhaps the most spectacular is the trade cycle. (166) Broadly, this cycle can be described and explained in the following terms. The cycle commences with the autonomous injection of capital (that is, investment) into the circular flow of income (167). This investment has a magnified impact on the general level of income, via the "multiplier" (168) effect, this enhanced level of total income calling forth an "accelerated" (169) increase in investment, which in turn raises the level of income once more, and so on, until the full employment level of the economy is reached, when the whole process is reversed, and economic activity steadily collapses, engendering a dramatic rise in unemployment, and fall in living standards generally. This alarming and debilitating decline continues until equilibrium as between withdrawals from and injections to the circular flow of income is restored, at which point the whole process commences afresh. Marx believed that these oscillations, marked by a recurring pattern of slump and boom, would grow progressively more pronounced, and that in a final crisis the bourgeois market order, proving itself to be inadequate and outmoded, would finally collapse, its historical function entirely spent. (170)

Since the producers hold no control over the aggregate production (171), capitalism remains far from reason as conscious appropriation. For it is, as we have seen, the essence of the laissez faire economic system which is the corollary of Nozick's version of the bourgeois conception of justice that collective control of the conditions under which economic activity takes place is dispensed with, and macro-economics is reduced to a purely contemplative science, in other words, the whole of the economic environment is left to chance.

But chance is only one pole in an interrelation, the other pole of which is necessity. In nature, where chance also seems to reign, we have long ago demonstrated in each particular field the inherent necessity and regularity that asserts itself in this chance. What is true of nature holds good also for society. The more a social activity, a series of social processes, becomes too powerful for conscious human control, grows beyond human reach, the more it seems to have been left to pure chance, as if by natural necessity ... these laws confront the

individual producer and exchanger as strange, and in the beginning even as unknown powers, the nature of which must first be laboriously investigated and ascertained ... To this day, the product is master of the producer; to this day, the total production of society is regulated not by a collectively thought-out plan but by blind laws which operate with elemental force, in the last resort in the storms of periodic commercial crises (172)

I feel myself unable to improve upon this passage from Engels, and therefore feel justified in quoting it at length. Capitalism, then, as a reassertion of nature as the sphere of lunatic necessity, is not a "spontaneous order", but a manifestation of the destructive chaos asserting itself at ever higher levels. It is into the realm of blind interaction that one enters on engaging in competition in any form; the acceptance or repudiation of the bourgeois conception of justice quite simply resolves itself into the choice between the rule of a phantom madman, and the rule of reason. The forces and processes which are set in motion are the necessary fruits of private law society, that is, the Great Society; but the Great Society knows of no means to deal with them. Where there is community, there is always the chance of imposing the collective will upon the physical and economic environment; where there is conflict, the outcome is determined by factors entirely independent of will.

The problems in this sphere are in essence, therefore essentially the same as those encountered in the state of nature (173). Hence, Popper argues (174) that just as absolute freedom in fact entails the domination of the weak by the strong, economic freedom, characterised by liberty rights in fact boils down to the domination of the economically vulnerable by the economically powerful. I would dispute this opinion only to suggest that it does not go far enough; for the essence of both these conditions is that even the relatively strong are at the mercy of forces which are wholly beyond the possibility of individual control, and as such are themselves dominated. Thus, we perceive the inadequacy of so-called economic freedom, and of its normative corollary, the institution of pure liberty rights.

The specific contradiction in Hayek's conception of justice lies in the fact of its ever more overt failure to fulfil the function of justice that Hayek himself acknowledges, that is, the

reconciliation of the subjective with the general interest (175), this function entailing the preservation of conditions in which private activity enjoys a reasonable expectation of success. (176) This contradiction is intimately related to the paradox involved in the liberal conception of freedom, drawn attention to by Singer, in terms of which in choosing "freely", the participants in civil society generate outcomes which none, not even the capitalists would have chosen. (177) I do not of course mean to imply that any of these forces, their outcomes or the general corollary of man's subjugation to the vagaries and fluctuations of impersonal processes seemingly external to himself is in any meaningful sense unjust, merely that it is a clear measure of the inadequacy of the conception of justice which fails in its own itinerary. Hayek acknowledges the existence of the impersonal social forces to which I allude; "Freedom means that in some measure we entrust our fate to forces which we do not control." (178) But this is surely a contradiction in terms; for there is no meaningful sense in which men are free while at the same time subject to forces truly or apparently external to their wills. Any improvement, indeed, on the state of nature which Hayek's "spontaneous order" offers us is merely relative, for humanity remains, although at a higher level, divided against itself, and as such, dominated by its own actions turned against it in seemingly alien form. (179)

(iv) Capitalist Society

Perhaps then, it is in order to enquire further of the realities of life in the social order which Hayek and Nozick advocate. We have already considered the chaotic condition of relations as between bourgeois nation-states (180); and within, even in times of external peace, humanity fares no better. Formal equality stands as a thin facade against the harsh opposition of private property in the means of production, and wage labour (181); the unattached mass of the population, who have nothing to sell but their labour-power. On Marxian principles, capitalist ideology fulfils the double role of simultaneously giving expression to, and disguising, misrepresenting, the real social conditions underlying it. Hence,

the process of apparently free transfer between "equals" serves only to obscure the exploitative relationships which under serfdom were only too clear. (182) Capitalist law is no more than an elaborately disguised codification of the power of the dominant elite; Marx addresses the bourgeoisie thus; "your jurisprudence is but the will of your class made into a law for all." (183) As a consequence of the imbalance of bargaining power, the employer acquires "a dominating position which requires no special legal privileges" (184) and is therefore effectively able to dictate the terms of the "contract" of employment, and thus to appropriate to himself practically all of the benefits of exchange. Ever recurring falls in wages are enforced by lock-outs (185); and not only can the employer effectively dictate terms, especially in times of high unemployment, but in absence of legal protection against summary dismissal, he also comes to exert a strong power over the conduct of the employee. For, even after the terms of the contract have come to be determined in this thoroughly one-sided manner, the employee is in a weak position from which to enforce his rights, such as they are. Equal rights continue for the duration of the contract, unless expressly waived, but, "the concrete economic situation compels the worker to forego even the slightest semblance of equal rights" (186). It is only when all "special legal privileges" (187) have been abolished and the transition from status to contract has been thus completed that the essential nature of exploitation in the capitalist age comes into its own; for while equality before the law means nothing more than juridical equality, it remains true that;

What happens behind the legal curtains, where real life is enacted, how this voluntary agreement is arrived at is no concern of the jurist. (188)

At will, the employer can depress wages to subsistence level, while extending hours of work to their physical maximum.

It is recorded (189) that in the nineteenth century, when the power of the bourgeoisie reached its zenith, six in the morning until six at night was a normal working day in Belfast. (Six days a week, fifty-two weeks in the year). Wages for unskilled labour, it seems, were appallingly low, and, working conditions in terms of safety and sanitary standards were atrocious. (190) Capital has no concern for the wellbeing of the labourers, unless under external,

social compulsion.

These facts are corroborated by McCabe, who records (191) that in England the new wealth brought forth by industrialisation was not shared by the workers. The general tendency of supply and demand to depress the condition of the workers was maintained by harsh anti-combination laws, enforced by savage sentences; Trade Unions were illegal in Great Britain between 1799 and 1824 (192). Children, who worked from ten to twelve hours a day, six days a week, for a penny a day, were brutalised from their earliest years. In this connection, it is as well to remark on the utter irrelevance of laws proscribing child labour, without a corresponding reconstitution of the economic structure of society. Such laws succeed merely in depriving the child of even this precarious means of sustenance, and thus prove to be meaningless. (193)

It appears that two per cent of the Russian population were industrial workers immediately prior to the October Revolution of 1917, and, according to the account given by E.M. Roberts (194), their condition was substantially worse.

Every single de iure virtue that is claimed for civil society is swift to transform itself into its de facto opposite. (195)

As to these virtues, competitiveness is best disposed of first; it soon gives way to monopoly with the inexorability with which conflict begets a victor. More importantly, there are freedom, and equality before the law. As we have seen, the bourgeois conception of freedom soon gives way to the self-negation of both economic domination, and the tyranny of subjection to apparently alien social forces. And out of the bourgeois conception of equality, a mode of reversal to feudalism comes into being. Subjection to rank is superseded and yet perversely re-asserted via subjugation to capital. And just as serfs were frequently denied access to the courts, in civil society much the same end is achieved by economic factors, so that the workers come increasingly to regard the law as something alien to themselves, their ends and requirements. The words of the eminent judge are now something of a cliché, but none the less still ring true; "The law, like the Ritz Hotel, is open to rich and poor alike" (196)

There remains a further sense in which the administration of justice in the bourgeois age is radically defective. It is of

course an essential precept of formal (or "natural") justice that the judge in any cause must reach his decision impartially, and should not therefore himself have any stake in the matter. (197) But, whilst the judge may have no personal interest in any contest which might come before him, he may none-the-less find that his class interests are affected. And since, for economic reasons, the judges and practitioners of the law in bourgeois society come almost exclusively from the moneyed classes, this is a further source of imbalance in the law. (198)

Civil society is a virtual negation of society properly conceived, that is to say, community. The state remains little more than an instrument of class domination, and the wholly spurious facade, indeed caricature of community which it affords serves only to mask a weltering sea of conflict at every social level. The urban bourgeoisie, though formed into a ruling class by virtue of parliamentary enfranchisement, find themselves at loggerheads with the rural landowners, and also, by reason of the competitive nature of the capitalist mode of production, with one another. Most fundamental of all, the irreconcilable demands of capital and labour find expression in a bitter class struggle between the bourgeoisie and workers. Within the proletariat, individuals are thrown into harsh competition amongst themselves, particularly in times of high unemployment. Further, the proletariat is thrown into contending ethnic factions, whose antagonisms arise as the outward expression or epiphenomenon of antagonisms rooted in the material conditions of life, more specifically as a consequence of economic competition. And, as we have seen, war between bourgeois states grows as an extension and implication of competition for raw materials and markets. (199)

Man is himself degraded to the status of a mere means, a commodity like all others to be bought and sold at rates which are only by a fiction the outcome of mutual agreement, rather than of impersonal, fortuitous market forces. By means of these blind interactions of supply and demand, the distribution of the necessities and pleasures of life is effected in an ultimately random manner. There is a further sense in which civil society entails allocative inefficiency; as people find themselves in increasingly rigidly defined economic and social roles, their potentialities are not put to the best possible use. According to Hayek, it is important that

individuals find that "their well-being depends primarily on their own efforts and decisions" (200), but surely in the social order he advocates, this condition can seldom be satisfied. Thus the intelligent proletarian finds himself trapped in a life of drudgery, denied access to education. In an extreme form, those who can afford education are the very individuals who have no need to make use of the capacities which education develops, and the content of what is taught comes to be estranged from human requirements. There can thus be seen to be profound utilitarian reasons for free state education. Social activity in general under capitalism is determined in part by blind economic forces, and in part by the whim of the ruling classes.

The bourgeois conception of justice in holdings stands, then, as a denial of the ideal; the concept of justice in holdings is introduced into the world as a means to the better enjoyment of the world's material resources, but at this stage fulfils its function ill. Production in its capitalist form is geared not to the satisfaction of human needs, but to the dictates of profit. If bread is needed by the hungry, and medicine by the sick, while the rich require guns with which to stave off revolution, it is the guns which will be produced. Appropriation and abandonment are the polar categories of exploitation, which itself consists simply in the treatment of people as means to an end, rather than as ends in themselves. (201) And as the worker's labour is appropriated when profit so dictates, so also will he be abandoned. Demand is related to objectified human will only in a distorted form.

As has been remarked, it is a poor analysis of civil society, and of the conception of justice which is its normative expression, that examines it only in its static aspect; a proper dissection must scrutinise it as something ever developing and changing within itself, according to its own inherent laws of movement. (202)

The uncurtailed law of succession gives rise to an ever intensifying rigidity in the stratification of economic and therefore social functions, giving rise to an ever intensifying determinism in human affairs (203).

There arises a new aristocracy; "The absurd conditions which make the only productive class of society the ruled class" (204) recreate themselves. Free competition gives way to monopoly

capitalism, entailing a class of men who have a vested interest in continuous shortage and allocative efficiency, and to imperialism. It is at this stage that the bourgeoisie grows ever more superfluous; only in the early years of capitalism does it perform an active social function of any sort. By Orwell's time, the owners of capital had become;

an entirely functionless class, living on money that was invested they hardly knew where ... simply parasites, less useful to society than his fleas are to a dog (205)

Marx himself considered that the arrival of the joint stock company, (206) with its separation of ownership and management functions, heralded the bourgeoisie's forfeiture of their historical role. The socialisation of production in rendering the owners of capital obsolete also serves to satisfy a major precondition for the transition to socialism, based on the common ownership of the means of production. (207)

Out of ease of acquisition and bargaining strength being in direct proportion to wealth, the rich grow richer, and the poor grow poorer. (208) Addressing the bourgeoisie, Marx observed;

You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population. (209)

Private property begets domination of the few, and domination of the few begets private property, so that a vicious circle comes into being. This movement is enhanced by technological advance, whose advantages are monopolised by the capitalist classes, while, for the workers,

The unceasing improvement of machinery, ever more rapidly developing, makes their livelihood more and more precarious. (210)

The consequent reduction of socially necessary labour serves only to render increasing portions of the work-force redundant, with

the accompanying further depression of wages as more and more sellers of labour confront fewer and fewer buyers. (211)

With the ever advancing concentration of capital, civil society becomes increasingly marked by the contradiction between its unlimited productive capacities and ever intensifying restricted consumption. This, in fact, is advanced by Engels as one of the three "contradictions" or tensions characteristic of capitalist production, together with the contradictions between social production and individual appropriation, and as between organisation within the individual economic unit, and the anarchy prevailing within the context of economic activity taken as a whole. (212) In direct proportion as capitalism becomes more and more outmoded, the more appropriate does socialism become.

Capitalism, therefore, is in its pure form inherently unstable; what then of the socialist and communist forms which allegedly arise in its place? In the next chapter, I shall examine the relationship of these conceptions to justice and utopia, and in this light, evaluate the claim that communism is to be equated with the goal of cultural evolution, "the definitive resolution of the antagonism between man and nature, and between man and man" (213) and as such with the attainment of "an ideal, and finally satisfactory, social order." (214)

Chapter 4; Socialism, Communism and Justice.

"The world is a raft sailing through space, with, potentially, plenty of provisions for everybody; the idea that we must all co-operate and see to it that everybody does his fair share of the work and gets his fair share of the provisions seems so blatantly obvious that one would say that no-one could possibly fail to accept it unless he had some corrupt motive for clinging to the present system." (1)

(i) Some Preliminary Considerations

Insofar as attempts are made to found systems of moral philosophy upon socialist ideology, one main ethical doctrine associated with socialism is the labour theory of property, according to which, since labour contribution is the active factor in the creation of economic value, profits, consisting in financial benefits accruing to capital or to land, fall to be regarded as the stolen fruits of labour. One of the earliest clear expositions of this view was that propounded by the French socialist, Pierre-Joseph Proudhon, in his essay of 1840, Qu'est-ce que la Propriété? (2), of which Marx was later to write that "it has made the essence of private property the vital question of political economy and jurisprudence" (3)

Proudhon's conclusions in this respect, which incidentally owe much to Proudhon's fellow countryman Rousseau (4), can best be summed up in his celebrated aphorism, "property is theft." (5) Proudhon's usage of the term "property", or in the French, "propriété", requires further explanation. Basically, it refers to ownership of the means of production, as the means of holding in bondage the labour of others, and as such falls to be contrasted with, in Proudhon's (in my submission, somewhat misconceived) usage, mere "possession" of goods, even producer goods, and small tracts of land, by the individual, for the immediate purposes of himself, and his family. (6) According to Proudhon then, profit from the labour of another represents expropriation of the most straight forward sort, and conversely, justice is satisfied when each and every worker receives his own undiminished product. (7)

Opposed to the view, however, were Saint-Simon, Blanc and Fourier (8), who looked not to justice thus conceived, but to brotherhood, or solidarity (9) for the basis of a revitalised human society. Accordingly, they sought to promote the rival principle of distribution according to need; Blanc was the originator of the formula "To each according to his needs, from each according to his abilities." (10)

Proudhon rejected this position out of hand, and considered such an ideal appropriate only to the smallest social units, such as the natural family; he held conflict to be innerent in social life, and inseparable from it. The highest peak that human organisation can ever attain to, therefore, is that of a comprehensive equilibrium of competing claims, in the individualistic form of justice. (11)

To a more detailed consideration of justice according to Proudhon I now turn. There is implicit here the view that the "contract" of employment is a mere fictio iuris (12), and that all labour in the presocialist society is really forced labour, be the working force slaves, serfs, or the "free" (13) wage-labourers of capitalism. One of the grounds on which Marx held Proudhon to offer a notable advance on the bourgeois classical economists, was that of Proudhon's claim that it is private property per se and not merely private property in any particular form that is the falsifier of economic relationships. (14) One immediate reservation here, however, is that we may appear to come dangerously close to the highly dubious notion of an "inalienable right". If the worker is not to be permitted to transfer his labour as he chooses, then so much the less is his right over it taken seriously, or respected. The account of justice given here, it would seem, is also defective in a number of other respects.

To begin with, it does not appear to take proper account of the reflective entrepreneurial function, without which rote, active labour is by itself inadequate. It also appears pertinent to point out that the institution of Proudhon's principle in undiluted form would entail the dismantling of the complex welfare apparatus constructed by the modern state, and indeed the public sector generally, which so many modern leftists seem so concerned to protect. (15)

More radical than this, no doubt, is the difficulty that the idea of the right to the undiminished fruits of one's own labour at first sight appears to present an insoluble logical impasse. If I am entitled to the proceeds or product of my labour, and that right, as is claimed, extends not simply to my immediate requirements, but to whatever exists over and above this level, or any part of it also, then this, since, as Marx asserts (16), capital consists of the accumulated surplus products of labour, operates in one simple logical step as a vindication of the private ownership of capital, with all the power that it asserts over labour. The paradox which arises here is that the right of both employer and employee can be demonstrated to be founded on the self-same principle, which therefore demonstrably enters into contradiction with itself.

The only possible way around this impasse is to assert that although the original labourer is entitled to his capital, he may not legitimately direct it to the employment of others, unless he pays them the whole of the material proceeds arising from the transaction. To this, however, the objections are obvious; and these objections are directly relevant to Proudhon, for this notion appears to be entailed by his vindication of the private ownership of producer goods, provided that these are not used as a means to the appropriation of the labour-power of others. This is particularly the case, since, as Marx has demonstrated, capitalist private property inevitably arises out of such a scheme of individual private property; one might question whether Proudhon, in demanding that each worker be made the owner "of a house, of a small-holder's plot of land, of necessary tools" (17) represents any sort of advance on Locke. It should of course be recalled that the minute subdivision of land achieved by the French Revolution failed, since the ownership of land came again to be concentrated in a few hands. (18) but on what grounds might a mutually beneficial exchange be forbidden? To assert that the employer necessarily acts unjustly involves a reversion to taboo morality, within which right and wrong function entirely independently of the satisfaction or otherwise of human will. (19) Further, the practical consequence of such an injunction on profit would be that the employer would not have invested his funds in the first place, since having no motive for doing so. The workers, far from being benefitted by being liberated from the yoke of economic exploitation, would simply be deprived

of their source of income.

I have attempted to demonstrate that even without the introduction of any further elements, the alleged right to the fruits of one's own labour presents an insoluble logical contradiction, simultaneously by implication both proscribing and permitting the private ownership of capital. At most, it would be suitable for the regulation of human affairs only in a society in which the process of production had been wholly perfected, that is, in which the bourgeoisie and its role in production had become wholly obsolete. It would seem certain that such a state of affairs has not yet come to pass, if, indeed, it ever shall, even if Engels clearly considered that it had come about more than one hundred years ago. (20)

There is a further difficulty which must be resolved if Proudhon's principle is to be forged into a properly coherent conception of justice. For the profits of one enterprise come to be expended and hence to form part of the profits of another. In which of the two businesses have the workers been expropriated? Clearly, both sets of workers cannot hold simultaneous and exclusive rights to the same sum of money. Related to this, might Proudhon's principle not raise the antithesis that the owner of the means of production, the capitalist, exploits the proletarian not in his role as worker, but as consumer, by compelling him to pay more for the necessities of life than they cost to produce? Who is exploited by the landlord, the tenant or the labourer who built the house? One thing at least is clear, it cannot be both of them, not, at any rate, to the full extent of the profit simultaneously. It might, of course, be pointed out in passing that if it were to be enacted that no man shall charge more for his product than it cost to produce, no-one would have any call to produce anything other than for personal use, and trade would grind to a halt. Here, such a norm presupposes the full socialisation of the means of production, for otherwise such an enactment would be directly counter-productive in exactly the same manner as would a law requiring that employers pay their employees the full fruits of their labour.

The answer to all this, no doubt, lies at least in part in Nozick's distinction between end-state and process principles of justice in holdings (21), but here I am immediately concerned with the task of rendering the principle of justice that is asserted by

Proudhon into a coherent form, in which it can be properly understood and evaluated.

But these pairs of contrasting views which I have adduced are, properly speaking, abstractions; what I shall henceforth refer to as the socialist principle of justice in holdings, is really a synthesis which raises itself above these seeming contrasts.

For, in truth, in its full conceptual development, the socialist principle embodies the precept of remuneration in proportion to labour contribution; it is the sheerest naivete and self-contradiction to treat market determination of value as given, or to treat wage-levels in this fashion, that is, to resolve the antithesis in favour of one abstraction or the other. In fact, when the socialist principle is coherently expressed, we find it to amount to the view that the consumer is expropriated when and to the extent that arbitrary market forces operate to raise the price, that is, the quantity of labour which he must render, above the cost of production, that is, the quantity of labour he receives in return, while the labourer is despoiled when and to the extent that he receives less in wages as reward for his labours than is embodied in his contribution. Under this, the socialist conception of distributive justice, all rights over particular objects are contingent upon claims on portions of the total social product, and as such dispenses with any need, so it would seem, for a theory of original acquisition. As I remarked earlier, labour produces objects, it does not create them, but this does not exclude the fact that labour creates economic value, and it is this act of creation which under socialism is the foundation of all property.

These, then, are the socialist and communist principles; the socialist principle consists in distribution according to labour contribution (contribution to whom? Surely, to society. Once again we receive a priori confirmation that the socialist conception presupposes that the march of history has fully socialised the process of production) while the communist principle involves distribution according to need. In criticising the formulations of these ideas as they appeared in the writings of those revolutionary thinkers who preceded him, Marx treated them in precisely the manner appropriate to the critique of any theory, that is, he clearly demonstrated their systematic limitations, and reduced them to

components of his own.

The main substance of this critique was that it is entirely inadequate to conduct the study of justice in abstraction from the real material bases which give rise to moral ideas (22). This position in essence depends upon an elaboration of Feuerbach's contention against Hegel that the ideal is dependent upon the real, not vice versa. (23) According to the Marxian sociology of morals (24), ideology springs from class conflict as opposed to causing it, so that particular ethical and legal systems are not to be conceived of as absolute, self-subsistent and eternal, as Kant would have us believe (25), but as pertaining to specific phases in the economic development of mankind, and, as such, historically relative. Having thus made clear what he considered the true relationship of the ideal and the real, for Marx it seemed to follow that

it is totally impossible to reconstitute society
on the basis of what is merely an embellished
shadow of it. (26)

It was in this sense that I stated that the principle of distribution according to labour contribution presupposes economic conditions in which a full development and socialisation of the means of production has been brought about. If jurisprudence and moral philosophy are to be properly scientific, it is claimed, they must seek to comprehend their subject matter in relation to the laws of human history such as Marx described them. The historical process, as Marx conceived of it, operates independently of human will in any form (27), and so for him it seemed to follow that any theory of justice which adopts the procedure of selecting from among competing conceptions the one by which men are to be governed is fundamentally misconceived, for, in Marx's own words, "Are men free to choose this or that form of society for themselves? By no means." (28)

Certainly, it appears inadequate to approach concepts such as justice as existing statically and in abstraction from all that is progressively realised in the sequence of actual events. Entirely consistently with this insight, Marx refrained from looking upon capitalism as an unmitigated and superfluous wickedness to be removed at the earliest possible opportunity, that is, as existing in isolation from the wider drift of historical flux and development.

For, although far from considering it to be just, Marx himself described the capitalist epoch as "justified" (29), as being an essential moment in the wider historical process and as such a necessary prelude to the advent of perfected human society. I shall presently turn to a detailed account of Marx's position on the question of justice in holdings, but at the outset, it must not be naively imagined that Marx was primarily concerned with a moralistic condemnation of the capitalist enslavers; for, according to Marx, the bourgeois no less than the proletarian is constrained in his movements by the innate laws of capitalist production. Just as the worker is obliged to alienate his labour for less than its true value, so also is the individual capitalist, on pain of bankruptcy, constrained to depress wages to their lowest possible level, and ever to supplant living workers with machinery. All of this is consequential upon the inherent nature of capitalist conditions of production, and "does not, indeed, depend on the good or ill will of the individual capitalist." (30)

The Marxian approach was adopted and elaborated upon by Friedrich Engels in his essay of 1875, Socialism: Utopian and Scientific (31). He held that in order that reason and justice might come to rule human affairs, it is not sufficient that they should suddenly be apprehended in the minds of the philosophers, and he opposed the naive approach that imagines that, once made clear in the minds of men, reason and justice would instantly embody themselves in social practice by virtue of their own inherent power. Those versions of socialism are "utopian" which involve themselves in this error, while those are "scientific" which, like the accounts given by Marx and Engels, take note of the inseparable relationship of the progression of ideologies to the laws of economic and historical development. As Engels put it; "To make a science of socialism, it had first to be placed on a real basis." (32) This approach, it must be confessed, has much to commend it; for how much moralising, how much philosophising, how much preaching is required in order that men will be induced to order their lives according to the spirit of justice, still less of fraternity?

(ii) An Exposition of the Marxian Theory of Justice.

The fundamental directing force in social development, according to Marx, is the dialectical drive, propelled by the class struggle (33), towards the establishment of property relations corresponding to and in harmony with the existing level of development of productive technology. (34) Thus it is that the increasingly social character of production under capitalism comes to require social ownership of the means of production (35), and by means of a great social revolution, production is brought under the control of a free and associated humanity. In the course of this transition from bourgeois society to socialism, the victorious proletariat wrests all capital from the bourgeoisie, and abolishes all private ownership in the means of production (36). This conversion of the instruments of production, brought to full maturity under capitalism (37), to the common social property, forms the basic presupposition and institutional prerequisite of post-revolutionary normative structures and conceptions.

At this stage, the work of the individual becomes a direct part of the total social output; no longer do men work at variance with one another. In bringing this to pass, the proletariat puts an end to all social stratification, including its own existence as the proletariat, thus bringing to a close "the more or less veiled civil war" (38) raging within bourgeois society. As the final and "irreconcilable class antagonism between capital and labour" (39) receives its definitive resolution, society is thereby constituted afresh upon the solid foundation of the community of material interests; since, on Marxian principles, social antagonism arises as an epiphenomenon of real conflict rooted in the underlying mode of production (40), it is only by such a radical reconstruction of the economic substructure that social life itself might be advanced. With this initial act of social appropriation, mankind attains also to a domination of the material and spiritual processes of life.

In the words of Fischer,

economic conditions are more powerful than the individual, that is not, for him (Marx) an eternal

law but a stage of historical development, the transcending of which is the great task of humanity. The economy must not dominate man, it must be brought under the control of a humanity made up of associated individuals (41)

It is precisely this triumph, so it is claimed by Marx and his followers, which the revolution brings to pass.

In the task of ascertaining Marx's position of the role of conceptions of justice in holdings in post-revolutionary society, I am greatly aided, and to a certain extent pre-empted by Ziyad I. Husami's excellent article Marx on Distributive Justice (42). This work sets out to answer Professors Tucker and Wood, in respect of the thesis which both in turn have subscribed to, to the effect that Marx did not, on a correct construction of his writings, consider capitalism as unjust. This position is set out by Wood in his article The Marxian Critique of Justice (43). He finds himself in a stance which apparently directly contradicts Sir Karl Popper's dictum, "Marx's condemnation of capitalism is fundamentally a moral condemnation" (44), by stating that although Marx did indeed condemn capitalism, he did not do so on the grounds of its alleged injustice. Indeed, Wood went so far as to maintain that Marx "insisted" (45) that capitalism is not unjust. What is claimed here is, essentially, that since the existing mode of productive activity is the real determinant of ethical values, it follows that justice is purely a matter of accordance and logical compatibility of social values with the economic structures of the age; principles of justice pertain to the self-image of the epoch, and as such cannot be used to relatively evaluate the competing normative systems of other ages. (46)

The contention is, therefore, that Marx does not in the course of his writings subscribe to any conception of justice as being the objectively correct one. In particular, Tucker founds upon the distinction between scientific and ethical or utopian socialism. (47)

Going to the core of what would seem to be Marx's ethical theory, Wood seeks to establish that Marx did not consider capitalist appropriation of surplus value to be unjust; that is, that Marx's conception of exploitation yields a labour theory of value only, and not a Lockean labour theory of property. To this end, he founds on the division drawn by Marx himself between the

respective magnitudes of the value of labour, and of the value of labour power. (48) Wood then proceeds to assert that since it is the latter of these which the capitalist purchases, he "merely makes use of what he has bought antecedent to the (labour) process." (49) So although the difference between these two quantities accounts for the origin of surplus value, and therefore, profit, the accumulation of surplus value is an act of appropriation, but by no means an expropriation. Insofar as the worker is compensated in full for the economic cost of the lesser of these two magnitudes, his capacity for labour, as opposed to the value created thereby, the transaction is a just one, consisting in the exchange of equivalent for equivalent.

In fact, there appears to be an implication in this passage that it is not the worker who is exploited, but merely his labour power, a commodity like any other; it should be noted, however, that such an interpretation of Marx could be directly confuted (50). But later, Wood explicitly asserts (51) that the exploitation of labour by capital, though not an injustice, is, however, a mode of servitude. He is then quick to point out that there is no necessary logical connection between exploitation or servitude on the one hand and injustice on the other; this fully reflects the principle made familiar by Hume that no descriptive term or terms by themselves entail further, evaluative, terms. (52) The use by Marx of terms, descriptive of matters and relationships, so universally and popularly used in condemnation, and therefore appearing as synonymous with evaluative terms, yields the illusion, but no more than illusion of moral denunciation (53). In this connection, Wood demonstrates that the labour theory of value only yields the consequence that profits involve injustice when conjoined with the labour theory of property, "a natural rights doctrine often mistakenly associated or identified with it" (54)

One of course concedes that such albeit dislogistic terms as "servitude" and "exploitation" do not in themselves entail value judgements, whether reactive or otherwise. After all, we frequently talk of the exploitation of natural resources, without for a second seeking to imply that the resources are in any sense wronged thereby. It seems pertinent here to interject that communism does not put an end to exploitation, but rather restores it to its

proper sphere; the wide variety of defects of all pre-revolutionary societies can be exhaustively subsumed under two curious inversions, namely the treatment of sentient beings as mere means to an end, and of nature, the category of pure being, as an end in itself, in the form of the subjugation of persons to impersonal forces.

But against the thesis of Wood and Tucker, Husami is wholly correct in drawing attention to a number of passages in which Marx employs explicitly and undeniably normative terminology, such as "expropriation" (55) - which of course must be contrasted with appropriation - "theft" (56), and "extortion". (57) I can but refer the reader to Husami's article itself (58), in which its author presents an inventory of terms much more impressive than that offered here. Further, Husami asserts that the seeming validity of the thesis presented by Wood and Tucker (indeed, the latter of these gentlemen considered that he had rendered any contrary opinion "untenable" (59)) rests upon passages taken from Marx which have been sundered from contexts in which they clearly disclose a satirical vein. Chief amongst these is a statement by Marx to the effect that the conditions giving rise to the appropriation of surplus value amount to

a piece of good luck for the buyer, (i.e. of labour power) but by no means an injustice to the seller (the worker) (60)

Having referred to this passage, and having had regard to the over-all context, I can but endorse and corroborate Husami's conclusion in this respect. It is quite clear that in this passage Marx is describing phenomenal appearances, the self-image that is the imperfect bourgeois conception of justice; it is immediately after these lines that the characterisation of the appropriation as a "trick" (61), referred to by Husami, follows, and immediately before, Marx describes such a vindication of capitalism as "litany" (62), fabricated merely with the design of "pull(ing) the wool over our eyes." (63)

If the authentic construction be otherwise, and Marx does not indeed deny the adequacy of the bourgeois conception of justice, what can he possibly have intended by the following?

He (the capitalist) does not care twopence for it (the litany). He leaves this and all similar subterfuges and conjuring tricks to the professors of political economy, who are paid for it (64)

Similarly, Tucker attributes to Marx the opinion that talk of rights and justice had in his time "now become obsolete verbal rubbish". (65) Again, this dictum is quite faithfully transposed, but its true meaning is obscured by severance from context. For reasons of style unknown, Marx's discussion of post-revolutionary arrangements in this passage runs in the present tense. Thus, for example, Marx writes earlier in the same passage of "communist society ... as it has developed on its own foundations". (66) It would certainly make an interesting extension to Tucker's thesis to allege that Marx's writings bear evidence that he held the view that communism had, in 1875, already arrived.

Husami draws a distinction as between Marx's sociology of morals, that is, his theory of the mutual interaction of the various successive conceptions of Right with the economic substructure (67), on the one hand, and, on the other, his moral theory, that is, the conception of Right to which he himself subscribed and considered suitable for adoption by the revolutionary classes (68); from here, Husami goes on to state that the error committed by Wood and Tucker is a consequence of the confusion of these two quite separate matters, so that at bottom their contention reduces to the not very remarkable, and indeed circular, thesis that capitalism is wholly in accordance with its own specific conception of justice.

Husami goes on to maintain that Marx's sociology of morals does not logically exclude him from espousing values not yet confirmed in the practice of society, and evaluating bourgeois institutions in terms of these transcendent (though not, as we shall see, eternal) norms; that is, Marx is not thereby committed to a form of ethical relativism. Indeed, quite the reverse; it would seem that in order to be able to properly criticise existing institutions, that is, to evaluate them in the terms of norms pertaining to higher forms of cultural development, one must first be clear as to what these higher forms will be. One qualification to this is necessary; the criticism of normative values need not

proceed by the comparison of these to transcendent norms, and by extension need not imply subscription to these. Thus Buchanan speaks of the "internal critique" of values, whereby they are criticised not by reference to other values, but to internal inconsistency or erroneous assumption of fact. (69)

It is with a determination, although not with an evaluative assessment, of Marx's position that Husami concerns himself in the remainder of the article.

Marx's sociology of morals requires further examination. Essentially, normative ideologies belong to the substructure, that totality of ideas thrown up in the course of the self-development of the material foundations of history; the consciousness determined by "the conditions of its social existence and, particularly, by its class interests" (70) (Indeed, it might be said that the "veil of ignorance" (71) device employed by Rawls appears to amount to a more or less explicit acknowledgement of this principle.) It follows that insofar as a given society is based upon an antagonistic mode of production, or else upon a normative expression thereof, it shall have appertaining to it not a single conception of justice, but also, arising alongside the dominant conception, as antithesis to thesis, the conception expressive of the consciousness and interests of the oppressed, the rising class; these are its "would-be ruling norms". (72) Out of the conflicting forces rooted in the material conditions of life springs the contest of ideas which is their phenomenal reflex.

Conceptions of justice, then, possess two levels of existence; firstly, as the dominant ideology, finding realisation and confirmation in the existing practice of society, and, secondly, as "counter-norms", (73) having a purely ideal or theoretical existence, and arising by virtue of the power of the negative. As such, normative ideology plays a vital role in animating and orchestrating the revolutionary class, and is an essential part of the dialectical mechanism through which, according to Marx, social evolution is propelled. (74) Indeed, if we are to take seriously the view that revolutionary ideology exists as the ideological reflection of contradictions becoming more acute in the conditions of economic life, then it would seem that a major role for a revolutionary theory of justice must consist in the

contrasting of existing norms with those which have become appropriate, and thus the evaluation of the former in terms of the latter. In the words of Engels,

The new productive forces have already outgrown the capitalistic mode of using them ... Modern socialism is nothing but the reflex in the thought of this conflict in fact ... its ideal reflection (75)

It must be remembered in this connection, as in all others, that the form of materialism propounded by Marx and Engels does not turn upon the non-existence of mind and ideas, but upon their substantive dependence upon the real. (76)

This counter-ideology is entirely ignored in Wood's article, and he therefore completely fails to notice that there is no inconsistency involved in the evaluation of present conditions by means of emergent norms; nor does Tucker fare any better, referring as he does to "the only applicable norms of justice - those operative in the existing mode of production and exchange" (77)

However it remains true, of course, that Marx was not primarily a moral philosopher; insofar as he concerns himself with the making of value judgements, these are for the most part negative in character, so that his ethical views must to a considerable extent be inferred from the conception of injustice that can be pieced together from his work. Essentially, this conception focusses upon the exploitative nature of the antagonistic, pre-socialist societies, briefly considered earlier, the injustice, like alienation, arising from and simultaneously reinforcing the private ownership of the means of production. It is especially appropriate to begin from a consideration of Marx's theory of exploitation, since he expressed it in remarkably precise, indeed mathematically exact, terms;

The rate of surplus-value is therefore an exact expression for the degree of exploitation of labour-power by capital, or of the worker by the capitalist. (78)

Following the English classical economists, particularly Ricardo (79), Marx held that the exchange value of an object is determined by the quantity (i.e. the product of the intensity and

duration) of labour put into it. Furthermore, labour possesses the peculiar characteristic of being able to create more economic value than is required for its maintenance and reproduction, "and this difference of the two values was what the capitalist had in view, when he was purchasing the labour-power" (80).

Surplus value, although apparently arising in circulation, in the process of commodity exchange, is in fact exclusively the product of stolen labour time. (81) The workers, owning no means of production, are obliged to alienate their productive capacities to the stranger who holds them as his own; dominion over the wherewithal of life entails a consequent dominion over men. In fact, there are passages in which Marx clearly equates labour rendered under such conditions with forced labour (82); emancipation from slavery or serfdom may appear empty indeed, in the face of a continuing denial of direct access to the instruments of production.

What distinguishes the various economic formations of society - the distinction between for example a society based on wage-labour - is the form in which this surplus labour is in each case extorted from the immediate producer, the worker (83)

At any rate, the capitalist profits by requiring the worker to continue labouring for a longer period than is necessary to meet his wages. Labour rendered after this point, Marx considers to be "unpaid labour" (84). He is enabled to reach this conclusion by conceiving of contract as essentially consisting in the exchange of equivalents, rather than in the apparently free exchange of entitlements.

At this stage, a few doubts present themselves. As for the idea of equivalents, it might be asked, whether, after all, economic value is to be quantified by reference to any objective standard. (85) Might it not be said that an object's value rests on the particular will and circumstances, the illusion of objective value resting on the price determination which arises out of exchange? If this were not so, and the values attached to particular objects by different people did not vary, would exchange take place at all? If it is indeed true that the opposition of preferences is the foundation of contract, it becomes plausible to defend commodity exchange

on the grounds that it affords the means whereby individuals are led to pursue, albeit unconsciously, the utilitarian goal of the greatest happiness of the greatest number, in such a manner, indeed, that does not entail the sacrifice of some for others. (86) The answer lies, perhaps, in part at least, in that the pattern of preferences is itself artificial, and is influenced by the unequal distribution of economic power. It might thus be argued that the benefits of exchange in a contract of employment, for example, have no more real basis than the apparent benefits of exchange which arise from blackmail or extortion.

For socialists, it is consequent that an unequal contract involves a disparity, an imbalance, an injustice. (87)

From all this it would emerge that the foundation and true source of bourgeois private wealth consists in "the theft of the labour time of others" (88). The foregoing, incidentally, operates to directly contradict Tucker's dictum;

They (Marx and Engels) do not admit that profit from wage labour under the capitalist system is 'theft' (89)

As to the rights which are central to the bourgeois conception of justice, Marx's main critique of these is contained in his essay, On The Jewish Question. (90) As well as being the definitive repository of Marx's theories on religion (91), it sets out to consider

the so-called human rights, human rights in their authentic form, the form that they have in the writings of their discoverers, the North Americans and French. (92)

On The Jewish Question is essentially a reply to a work of the same title by Marx's contemporary Bruno Bauer, in which the latter argued that in order to overcome their civil disabilities, and thus to attain to the rights of man, the Jews required first to emancipate themselves from their religion, since their very nature as Jews set them apart from the community. (93) On the contrary, argued Marx, their Jewishness presents no objection to their political emancipation, since it is upon "egoism" and not

upon community that the "rights of man" of bourgeois society are based. Jewish emancipation, as a microcosm of political emancipation generally, does not bring the Ideal to fruition, rather this is accomplished in a wider human emancipation by means of which mankind's alienation, manifesting itself in the political state divorced from community, and in religion, is superceded. What is required, writes Marx, is not freedom of religion, freedom of property, and freedom of trade, but freedom from religion, freedom from property, and freedom from the egoism of trade. Religion (and therefore religious antagonism) arises merely as the epiphenomenon of real misery, so that with the positive abolition of economic exploitation and degradation, the right to freedom of religion, hailed as a sacred and eternal truth, becomes both redundant and meaningless (94); bourgeois rights generally, then, far from being natural and eternal, pertain merely to an inauthentic and transient chapter of human history.

What then, apart from freedom of religion, are these rights of man, these "purely formal rights with which the world of selfishness surrounds itself" (95)? Essentially they are, as enumerated by Article 2 of the American Constitution of 1793, "equality, liberty, security, property" (96). Each of these, however, requires to be examined in turn.

In terms of Article 6, "Liberty is the power that belongs to man to do anything that does not infringe on the right of someone else" (97). But, for Marx, "The freedom in question is that of a man treated as an isolated monad and withdrawn into himself" (98). Liberty, above all, is defined with reference to property, or exclusive dominion over some arbitrarily determined portion of the world's resources and surface area. Elsewhere, Marx writes of "private ownership of the globe" (99) as an absurdity and states that even the whole of society represents only the "usufructuaries" (99)

Article 16 defines the concept of property;

The right of property is the right which belongs to all citizens to enjoy and dispose at will of their goods and revenues, the fruit of their work and industry. (100)

However, it might be argued that for people to be able to

enjoy "the fruit of their work and industry", the socialist principle of justice in holdings (101), which directly correlates distribution to labour contribution, would first have to be implemented.

Private property, incidentally, is as a side constraint the supercession of arbitrary dominion, but paradoxically at the same time delineates an area, a perimeter, within which arbitrary dominion holds sway. (102)

Human self-centredness appears simultaneously as the cause and justification of private property, but, in reality, according to Marx (103), the relationship is the reverse, self-interest, as a form of alienation or estrangement arises not as the original cause but the symptom of acquisitive society.

Equality, of course, is conceived of, by Article 5 of the American Constitution of 1795, in the purely formal sense, and consists in that "the law is the same for all, whether it protects or punishes" (104). Security, also, is conceived of only in its weak sense, of protection from aggression, and the conservation of property. In the words of Saintsbury, "Even the 'right to live' extends no further than the right to protection against murder." (105) This severely limited conception of security not only does not include, but actually of necessity excludes, security in the positive sense, of freedom from want and destitution. (106)

The formulation of the right to security here under consideration, however, does in one important respect diverge from Nozick's system; according to Nozick (107), the right to security, as positive protection, does not arise as an automatic consequence of the rights thereby protected, but only insofar as this is purchased from others. Nozick thus takes this particular conception of justice to logical purity; the positive right to protection of one's entitlements, independent from any contractual arrangement, must be taken as a qualification and partial rejection of the other rights simultaneously espoused. We are presented with the paradox that rights to property, taken absolutely, actually operate to exclude the right to security in one's property.

With the coming of the proletarian revolution, however, in which all social stratification arising from private ownership of the means of production and therefore class conflict, is abolished, all this is reversed. The instruments of production, and the process

of production itself, as a superintendence over natural agencies, are placed in the hands of the new community, so that individual property (108) arises only in the "means of consumption" (109), or finished social product. No longer is Right merely "the religious caricature of morality and law in general" (110).

Marx's statement on the principles governing post-revolutionary society finds its locus classicus in a work of 1875, the Critique of the Gotha Programme (111)

Two post-revolutionary principles are identified, the socialist principle, which already has been discussed (112), and growing out of and superceding it, the communist principle, "From each according to his ability, to each according to his needs" (113).

The emergence of communism out of socialism is a direct natural and spontaneous development, taking place without the need for a further revolution, much in the same fashion as monopoly capitalism naturally arises as the negation of individual private property, which latter corresponds to the beginnings of bourgeois society. (114)

The socialist principle, which, as we have seen, entails distribution of the means of consumption in direct proportion to labour contribution to socially organised production, corresponds to the period of revolutionary transition from capitalism to communism, that is, the phase of political transformation in which "the state can be nothing but the revolutionary dictatorship of the proletariat." (115)

Marx's critique consists largely in an attack on the nebulous concepts of "undiminished proceeds of labour" (116), and "fair distribution" (117) contained in the pious and platitudinous resolutions of the Gotha conference. For what is meant by "fair"? Is not capitalism "fair" on its own terms? In any event, Marx argues, it is false and fundamentally misconceived to conceive of socialism as turning on a question of distribution - still less of redistribution - independently from the relations of production; since the distribution of wealth and also fungibles results more or less as an inevitable consequence of the underlying conditions of production, it is upon the organisation of these that attention requires to be focussed. (118) And as to the former phrase, what is intended by it? Is it, "the product of labour or its value?" (119) The total value

of the product, or only that added to it by labour?

Marx gives the following answer. Before the social product can be divided up and distributed, there are three preliminary deductions to be made. These are a matter of economic necessity, and, as such, in no way calculable by equity. Firstly, there are to be deducted funds for the replacement of the means of production used up; "the lost steel of the spindle". (120) Secondly, an additional deduction to furnish the expansion of production. (Who would decide on the proper extent of this? Would the absence of class antagonism necessarily entail the absence of serious disagreement?) Thirdly, to maintain a reserve fund, an insurance against calamity. After these three deductions, what remains represents the "means of consumption". From this, there remain three further deductions to be made, so that the right to one's own labour is not absolute, even in socialist society. The first of these is the general cost of administration (121). (But is this really a deduction; does not administrative work count as a part of socially necessary labour to be treated on the same basis as any other labour undertaken in socialist society?) Marx believed that this expenditure would become increasingly restricted with the development of post-revolutionary society; it goes almost without saying, however, that the experience of countries where socialist ideology has taken root has been exactly the reverse. There are also to be deducted "funds for those unable to work etc." (122) But how much would such people receive? The same amount as is received by the average worker? As the least productive of the workers? Less? If so, how much less? Marx leaves the question unanswered, indeed, unconsidered. Elsewhere, as I have already stated, he advances the view that any particular distribution arises spontaneously and automatically from the underlying relations of production, but it is difficult to see how this could apply here. The next deduction represents what is required "for the common satisfaction of needs, such as schools, health services etc." (123)

The quantum of this expenditure grows in direct proportion to the development of post-revolutionary society. This passage is to be read together with the final part of the Manifesto of the Communist Party, which enumerates measures which would become applicable in socialist society. (124) The language here is purely

predictive, a statement of what will be, but it seems that the overall context requires the view that Marx was also simultaneously proposing these measures. In this account, he writes of "free education for all children in public schools" (124), but no mention is made for health. Particularly since health services are specifically referred to in the passage from the Critique of the Gotha Programme quoted above, it seems most probable that this omission was the result of an oversight. It is as well to point out, however, that the two accounts of socialist social organisation differ; the Manifesto of the Communist Party version provides for a graduated income tax, which presupposes deductions from income rather than direct distribution after requisite deductions have been made, as envisaged by the Critique of the Gotha Programme. Taxation in any case represents distribution being effected by political intervention, as opposed to determination by the underlying mode of production. It seems that a total end to private industry is not envisaged by the ten measures in the Manifesto; the seventh point mentions only "Extension of the factories and instruments of production owned by the state" (124).

Be that as it may, it remains the case that distribution in direct proportion to labour contribution is not logically compatible with a progressive income tax. One must of course remember that twenty-seven years elapsed between the two works, so this time-lapse no doubt accounts for the discrepancies, at least in part. It seems safe to take the later work, the Critique of the Gotha Programme, as representing the mature views of Marx. One item, in the tenth "commandment", is rather mysterious; "Abolition of children's factory labour in its present form" (125). It is unfortunate that Marx did not care to elaborate upon this potentially illuminating remark (126); one might however observe that there are certain tasks which are eminently suited to children, as spare time occupations. The chief objectors to laws completely abolishing child labour would without doubt be the children themselves.

As A.J.P. Taylor wrote in his introduction to the Manifesto of the Communist Party, "Most of (the ten reforms) have been carried out by states far from proletarian." (127) It seems pertinent to remark in passing that had the ten reforms been offered as forecasts of developments in post-war Western Europe, Marx would have met with

considerably more success than that with which he has met in connection with the predictive analysis which he did in fact make.

(128) The provision for a graduated income tax, centralisation of the means of communication and transport in the hands of the state, free education and central planning of the distribution of population are particularly reminiscent of the present day United Kingdom.

There is one further matter which requires attention before I leave the ten reforms of the Manifesto, namely the substance of the third reform, "abolition of all rights of inheritance" (124) in other words, of the right to bequeath. This also raises the suspicion that complete abolition of private ownership of capital was not at this time envisaged, and also contradicts the later Marx in a further fundamental respect. Marx was later to make the point that just as the laws of slavery do not precede the institution of slavery (129), real reform can only be effected not by means of piecemeal adjustment of societal norms, but only by means of changing the foundations of society, the conditions of production. It is clear from the Critique of the Gotha Programme that trade as such would end, not because it would be rendered illegal, but because it would become impossible, since the entitlements over commodities that trade presupposes would no longer exist. (130) In just the same way inheritance of the means of production would also be "positively abolished" (131), since the means for effecting this, that is, private ownership of the means of production (132) would have ceased to exist. In this connection, one might speculate as to whether inheritance in the limited sense of inheritance of the means of consumption and work certificates not used up at the time of death might not continue. (By means of a system of certificates, Marx tells us, the worker under socialism receives the same amount of labour as he has contributed to it in another form. (133) This of course must not be taken absolutely, but as modified by my earlier outline of Marx's pronouncements on deductions (134)). And if this is so, might not these certificates also be freely transferable as among the living? If not, why not? If so, in what respect would they differ from the "Universal whore" (135), money?

The principle of contract, however, according to Marx, would now attain its fullest fruition, in the sense that it would now truly become an exchange of equivalents, in reality and not simply

in appearance; "a given amount of labour in one form is exchanged for an equal amount of labour in another form" (136). No doubt, economic demand for such goods and services that people are willing to trade these certificates for would play a major role in deciding what goods and services are to be produced. Supply, in other words, would continue to be correlated to demand, although not by the automatic operation of the price mechanism, but through the conscious decision of the central production planning authority. This line of speculation tends to find confirmation in Marx's castigation of private property in the means of production as the falsifier of economic relations (137); without this source of distortion, economic "signals" would, no doubt, operate more accurately and efficiently. In any event, people would not be inclined to work if they could not use their labour certificates to obtain the goods and services which they actually wanted; it remains an important element of freedom that individuals be permitted to direct their efforts to ends which they themselves chose. Although deductions are made, these deductions, we are told, somewhat vaguely, all benefit the worker in an indirect form, in his capacity as a member of society. (138)

And yet, the absolute mode of social intercourse is not yet reached, there are still "defects" (139); "In spite of this advance, this equal right is still constantly stigmatised by a bourgeois limitation" (140) That is, the equality consists in the application of an equal standard, labour contribution. But the consequence is the maintenance of a further imbalance. Different individuals are unequally endowed, some are superior to others in intensity and quality of labour power than others, so that the socialist principle continues to recognise unequal endowments as "natural privileges". (140) Besides, the socialist principle takes no account of varying needs, such as family responsibilities and so forth. (139)

Marx clearly recognises that "equality" taken as a totality is an incoherent and therefore impossible notion, and as such has the appearance of freedom from self-contradiction only in one or other of its specific abstractions; consequently, equality in one form of necessity contradicts it in another. "It (the socialist principle) is therefore a right of inequality in its content like any other right". (140) He also acknowledges the tension, also founded on by Nozick (141), as between formal and substantial equality; to

surmount the "defects", "Right instead of being equal would have to be unequal" (139).

As socialist society advances, it grows to conform to a new and final principle, the communist principle. The fully developed productive technology, a legacy of the bourgeois age, (142) brings emancipation from the more stultifying forms of labour, and the deliverance from want and deprivation is procured by the new-found social productivity; now can "society inscribe on its banner: From each according to his ability, to each according to his needs!" (139)

One reservation, a relatively minor one no doubt, springs immediately to mind; this maxim does not present us with a complete principle of distribution, since it deals only with needs. How are less pressing desires to be met, that is, how is the social product remaining after the satisfaction of needs to be distributed? This principle, and also the socialist principle, are both also incomplete in the further sense that they appear to envisage the means of production and the means of consumption as exhaustive categories, so that the position of consumer durables is to say the least left unclear. One must of course remember that Marx wrote in the nineteenth century, before the present age in which telephones, televisions, stereos, motor cars and all the rest have become commonplace. It seems plausible to suggest that Marx no more foresaw this state of affairs than Hegel, who saw the conflict of nation states as a means to progress, envisaged a condition of things in which men would come to a possession of the means to self-obliteration. (143)

Let us take this objection one step further, in conjunction with that made earlier, concerning the resemblance of work certificates to money. Suppose that one man has accumulated all the consumer durables that he requires, perhaps because he has been engaged in productive activity for a number of years, and that another man, who has been working for a shorter time, finds that his present requirement for such articles is far in excess of his immediate spending power. Might not the first man, then, enter into an agreement of loan with the second, albeit charging interest? And, if this should prove sufficiently lucrative, may not the first man then make his living in this fashion, perhaps acting as a go-between, borrowing from others in this position, at one rate of

interest, and lending to others at a higher rate. (Such an activity would not of course entail the personal ownership of any instruments of production). It is all very well to talk of state control of credit (144); but at the same time, there is something decidedly unsatisfactory and contradictory about the placing of limitations on the exchanges of entitlements which free men may enter into. (145) While Nozick's conception, as I have maintained, cannot succeed as a complete system, (146) nevertheless, particularly insofar as it relates to freedom of transfer being implicit in and inseparable from the concept of entitlement, it would appear to admit of rehabilitation in the limited sense of placing constraints on what can satisfactorily be concluded to be just.

In any event, this example serves to illustrate that even the full socialisation of the means of production would not eliminate all occasions in which there is scope for mutually beneficial exchanges to take place. If this is so, then a wide range of transactions between individuals cannot but appear legitimate, and this fact cannot be reconciled to any final patterned distribution of the means of consumption. The socialist principle, then, as best, might find itself relegated to the status of a precept regulating initial distribution only.

I would affirm, then, that the lending of money with interest has no necessary incompatibility with the Idea of justice, that is, justice in its perfected form. Nor indeed, by extension, would there appear to be any direct affront to justice if the funds required for investment be raised not by compulsory deduction from the total social output, but from voluntary individual subscriptions giving rise to differential shares in the socially owned means of production, and in produce therefrom.

These objections laid to one side for the present, we perceive that in the Marxian scheme of things, production is at last, once the socialist principle has been fully superceded by the communist principle, geared directly to the satisfaction of specifically human ends.

This much having been made clear, the time has come for me to relax, and, if necessary, to discard, a central assumption which I have so far made, that is, the assumption that the absolute condition of human society coincides with and consists in the full

development and actualisation of the idea of Right. For, if the realisation of the communist principle represents justice made actual, then how can Marx, without severe self-contradiction, write that;

Communism abolishes eternal truths, it abolishes all religion, and all morality, instead of constituting them on a new basis (147) ?

Further, in the Critique of the Gotha Programme (139), he states that under communism, "equal right", "fair distribution" and so forth become "obsolete verbal rubbish ... ideological nonsense about right and other trash."

It would appear, that in Marx's account, the communist principle is not a principle of distributive justice at all, but rather that it represents the supersession of Right, which has by now been brought to full development in the shape of the socialist principle; equal right, under socialism, exists in practice, not merely in principle. (148)

"Right", Marx tells us, "by its very nature can consist only in the application of an equal standard" (140); the equal standard being labour contribution. (149)

Consider the following; "only then (i.e. with the advent of communism) can the narrow horizon of bourgeois right be crossed."

(139)

This is, on the face of it, ambiguous. Does "bourgeois right" refer to the bourgeois conception, or the bourgeois Idea of Right? That is, the whole question arises as to whether the regulation of human affairs by means of generally applicable norms, rights and duties is the enduring and empty form within which social development takes place, or else is a phenomenon specific to a certain limited historical context. In the light of the foregoing, it seems indisputable that the latter construction is the authentic one. This would appear especially so, since immediately after the passage from the Manifesto of the Communist Party quoted above (150), Marx goes on to point out that the fact that religion, law and morality have thus far (in 1848) survived all political change, albeit in ever-changing conceptions, is not to be taken as confirmation of these as eternal forms, but rather as explicable in terms

of the basic feature that has been common to all societies prior to socialism, "viz., the exploitation of one part of society by the other" (151) Husami, it would therefore seem, has quite simply missed the point when he describes the communist principle as "the principle of distributive justice in communist society." (152) Lenin himself also commits the very same error, for he writes that socialism "still cannot produce justice and equality", (153) this task being left to communism. Further, he states that for Marx, "equal right (by which socialist society is characterised) is really a violation of equality, and an injustice" (154) If this is not after all an erroneous construction of Marx's position in Critique of the Gotha Program, then it is difficult to see what Marx can have meant by the passage earlier quoted, concerning the communistic supercession of "ideological nonsense about right and other trash." (155) Lenin, then, would seem to have entirely missed the analytical connection between justice and self-interest, that is, limited altruism. (156)

For this reason, I do not believe that Marx advanced the communist principle as a principle of justice or of Right. Indeed, it is open to question that he even intended it as an administrative norm, such as would in its application raise questions of formal justice. It is this point which Buchanan is making when he argues that;

Marx is not offering the slogan as a communist principle of distributive justice, but rather a description of the way things will in fact be in communism (157)

Lenin's error in identifying communism with justice acquires considerable significance later in this chapter, as it shall transpire that Lenin exhibited this misconception not merely by words but also by deed. (158)

Although, as Husami correctly asserts, Marx is not precluded from evaluating present conditions in terms of transcendent standards, and in fact does so, it does not follow that these standards are eternal, nor that they represent for Marx justice, or even Right, in its final form. In its realisation, the communist principle represents not the actualisation, but the supercession of Right;

distribution according to needs exists as a value only in the purely negative sense that it serves as a transcendent norm, as a critical evaluation of the values and institutions of pre-communist societies.

It is in this sense that Buchanan asserts that communism, in Marx's system, is the solution to the problem of justice, not because it is its realisation, but because it renders the whole concept redundant, (159) and maintains that

communist society - the society of autonomous, socially integrated individuals - will not be a society in which (general) conceptions of rights or justice play any significant or major role in structuring social relationships. (160)

There appears a further interesting statement in an article from the "Sunday Times" Review (161), in relation to a review of Buchanan's Marx and Justice, and Wood's Karl Marx (162);

What's distinctive about Marx's view is the thought that eventually considerations of justice will simply disappear; an obsession with justice is typical of capitalist societies based on private property, where everyone is fearful of being robbed - and indeed the worker is robbed.

Marx, like Nozick, quite clearly considers justice and the direct provision for need as two quite separate matters, and it is around the incompatibility of the two that his critique of Right, and not of any particular conception thereof, revolves.

In the Marxian scheme of things, I would suggest, it is during the not yet perfect socialist phase that justice finds its full conceptual development, and remains as a direct legacy of the bourgeois age from which it grew. It will be recalled that I earlier remarked that the concept of property in the form of the definition given in the American Constitution would require socialism to bring it into proper effect (163); some system of property rights is of course necessarily entailed by the concept of distributive justice, and therefore the supersession of property entails the supersession of distributive justice. Related to this, socialism gives full expression to the operation of self-interest within a framework of rules of conduct, (164) by directly correlating

distribution of material goods to labour contribution. Also, the theoretical difficulty of original acquisition, which appears intractable in the bourgeois age (165), is resolved, since rights to objects of value come to depend upon rights to some determinate portion of the total social output. Similarly, I have referred to the fact that the principle of contract, according to Marx, that is, the exchange of equivalent for equivalent, would also come to full realisation. (166)

I do not claim that Marx expressly equated socialism with justice; I seek only to demonstrate that this equation accords with, that is, it does not contradict in any important respect, Marx's statements as contained in The Critique of the Gotha Program and elsewhere.

There is a fifth sense in which this assertion rings true; insofar as I am entitled to assume that the judicial function would continue into the socialist age, formal justice for the first time becomes a real possibility, with the elimination of the possibility of judicial class bias. (167)

This assumption, in fact, turns out to be correct, for in a passage from Marx's The Civil War in France (168), it transpires that a judiciary is indeed a part of the reconstructed socialist state, although now shorn of its "sham independence" (169), and like all other officials under socialism, the judicial functionaries are "to be elective, responsible, and revocable" (169). In passing, one might express the misgiving that such "reselection" for judges might be seen as the supplanting of justice by mass sentiment. Similarly, in what sense would "people's courts" (170) differ from kangaroo courts?

But now, with the advent of communism, the whole affair of law, state and religion grows increasingly superfluous; they are positively abolished, not in the sense that they are deliberately overthrown or destroyed, but rather in that they vanish as a spontaneous development (171) together with the material conditions which gave no rise to them, and of which they are the ghostly reflection. The institution of Right arises as the negation of and necessary solution to the estrangement of man from man, but in its triumph necessarily procures its own dissolution, and withers away;

the Idea of Right presupposes that men continue to some extent at variance with one another, that is, that it has not fully attained its own specific object. In short, Right finds itself in the dual and self-contradictory role of representing simultaneously the solution to and product or expression of alienation. (172) As volition objectified, it seeks to unite subject with object, but its expression presupposes its own limited realisation. All this becomes particularly evident in Bentham's characterisation of the function of the law as the "artificial identification of interests." (173) How superfluous and unnecessary, then, when the identification is no longer artificial but real.

It has been pointed out by Rawls that the theory of justice presupposes limited social motivation, and that the society in which all men spontaneously co-operate, like a colony of ants or bees in which the common interest in no way diverges from that of the individual, is a society beyond justice; "It has eliminated the occasions when the appeal to the principles of right and justice is necessary". (174) This, according to Rawls, is how Tucker has interpreted the Marxian account of communism. (175)

With the release from stultifying forms of labour, and with the new-found material abundance (176), the norms of distributive justice, which presuppose a condition of things in which there is insufficient means to the full satisfaction of all wants become not merely superfluous, but also wholly devoid of meaning. As the human mind attains to a state of final and all-embracing self-awareness, and with the arrival of the new-found brotherhood of man, securely founded in the material conditions of life, all false ideology, the phantoms of human imagining, finally comprehended, evaporate, and are forever laid to rest.

Nonetheless, it seems appropriate for me to consider briefly the precise relationship of Marxian theory to the doctrine of utilitarianism, primarily since it has been charged (177) that Marx's moral theory reduces to "simply a crude utilitarianism." (178)

In point of fact, Marx was singularly unimpressed by the principle of utility (179), contending that this reduction to a single principle, indeed an "apparently metaphysical abstraction" (180) merely reflected the subordination in bourgeois society to "one abstract monetary-commercial relation" (180).

It will also be noticed that my earlier remarks on the realisation of objective rationality (181) bear at least a passing resemblance to the utilitarian advocacy of the extension of the principle of rational choice, that is, the balancing of contending interests in such a manner that the most ponderous prevail, to the sphere of interpersonal, that is, social relations.

To this extended principle, there are apparently two possible interpretations. Firstly, that the interests of some are to be counterbalanced by the more ponderous and contrary interests of others. Alternatively, that an interest held by all is to be outweighed by a greater interest similarly held by all. The second interpretation is not of course a categorical, moral, principle, since it does not purport to assess the opposing claims of competing individuals, but rather is a hypothetical principle which presupposes a realised community of interests.

There are, incidentally, two aspects to taxation which correspond to the two sides of the dichotomy; firstly, where the tax is to finance some common good in a manner that the unregulated market cannot (182), and secondly, where the tax serves an object which is overtly redistributive. To redistributive taxation, a further subdivision falls to be made. Firstly, it can be in the form of an actual transfer, as with social security, or it can take the form of a constructive redistribution brought about by progressive taxation (183), or even by means of a proportional tax exacted for equal services.

In the particular brand of utilitarianism espoused by Hume, utility is envisaged as co-inciding with the common good. According to Rawls, this theory is not properly speaking utilitarian, since he considers the essence of utilitarianism to lie in the fact that it permits, indeed requires, the imposition of sacrifices on some where this procures a greater aggregate of advantages for others. Rawls claims that no mention of this is made by Hume (184), so that in his writings the problem of the priority of justice, as a system of constraints on action, simply does not arise.

Now this notion of Hume's, the "common good", would appear immediately objectionable; it is the essence of bourgeois society that in it there is no such common good, rather, it is the whole foundation of Marx's analysis and critique (185) of the bourgeois

epoch that its identifying feature is the myriad of opposing and interacting interests which it entails. (186)

Conversely, it would appear to follow that the principle of utility would become directly applicable under communism; since there would no longer be any antagonism of material interests, there could be no question of the weighing of the interests of some against the opposing interests of others. It would appear therefore that side-constraint conceptions (187) presuppose a social background marked by an essential disharmony of interests. But with the coming of communism, according to the Marxian conception, "nature's eternal harmony" (188) ceases to exist only in transcendent or at any rate ideological forms, and becomes immanent within society itself. Further, the basic alienation model earlier expounded, taking the form of the opposition of the general to the sum of immediate particular interests, can be used to demonstrate that in the imperfect society there are two levels on which interests can be said to exist; the immediate, or phenomenal, and the transcendent, or noumenal. (189) The realisation of objectified rationality, consisting in the resolution of this opposition in true community, and which in itself in no way entails the subordination of the interests of some to the interests of others, is a further sense in which the Ideal becomes the real, and the real becomes the Ideal.

In the light of these considerations, it becomes a much simpler task to discern the nature of the errors committed by Wood, and at the same time the element of truth contained in his essay. He is certainly justified in holding that, for Marx and Engels, justice is an essentially juristic concept and does not after all represent "the highest measure of all social things" (190)

It was for this reason that Marx criticised those theorists such as Proudhon, Lassalle and the rest, who held no more ambitious designs on socialism than the securing of human rights. It is from the juridical perspective only that justice represents the highest ordering of human affairs; but it is precisely the juridical point of view which Marx sought to transcend. Under socialism, Right attains its full realisation, but turns out at the same time to be a self-contradictory and therefore impossible notion, simultaneously negating and presupposing the separation of man from man, and is

superceded. Wood and Tucker are enabled to evade this particular conclusion, by the simple expedient of omitting to consider the socialist phase which lies intermediate between the bourgeois and communist epochs, and in Wood's case (191) by failing to recognise the analysis of history as a development, and not as a simple succession of social structures.

It is also certainly true, however, that Marx did not consider the matter to turn on the question of justice, as we have seen. For him, the pre-occupation with justice was inextricably bound up with reformist rather than revolutionary theory (192), and holds the implication of striking a conventional balance as between the contending, and, according to Marx, "irreconcilable" (193), interests of the various social orders. Rather, Marx did not take up the task of mediation, but rather was concerned with the elimination of these antagonisms, in favour of a real harmony of material interests; this is, in essence, the historical role of the proletarian revolution.

The concluding section of Wood's essay merits attention; here he points out that there is little to be gained by debating Marx's precise ethical position. (194) This is because Marx took the practical line of condemning capitalism on the grounds of such clearly apparent evils as servitude, economic instability, the abject misery of the mass of the people, and so forth, without unduly concerning himself with any exact academic consideration of the philosophical bases of these condemnations, be they Kantian or utilitarian. (195) While on a proper analysis of Marxian theory, Marx's writings are not incompatible with a moral viewpoint, and in fact disclose such a viewpoint in glimpses, it is true that Marx nowhere addresses himself to a full scientific and definitive examination of the ethical issues raised by his work. His (no doubt unintended) contribution to ethical theory consists in that the full richness of his work might serve to inform a fully systematic moral treatise, to be prepared by another.

Before moving on, there is much illumination to be derived from a consideration of the upheaval which followed in the wake of the Russian Revolution of October 1917.

The immediate consequence of the revolution was chaos (196); the workers lacked the expertise necessary to run the factories,

foreign trade stopped, and the peasants resisted collectivisation. These ills sprang essentially and directly from the attempt to impose pure communism; communism, on a correct interpretation of Marxian theory, is not supposed to be imposed at all, but to emerge as a spontaneous development from socialism;

Communism is not for us a state of affairs to be brought about, an Ideal to which reality must somehow adjust itself. (197)

The whole bitter tragedy of the resistance of the peasants to collectivisation (198) exemplifies as clearly as anything the error committed by Lenin and his associates. According to Marx's materialist conception of history, the full socialisation of the means of production, industrial and agricultural, was supposed to be one of the unintended achievements of the capitalist age (199), which in Russia was not permitted to run its course. Lenin's The State and Revolution, written on the eve of the Revolution, is most illuminating in this respect, for in it Lenin pays lip service to this aspect of Marxian doctrine, in that he discusses and endorses it in general theoretical terms, without descending to concern himself with any question of its applicability or otherwise to Russia in 1917. (200)

In the face of catastrophe, Lenin introduced the New Economic Policy in 1921. This was in fact a limited rehabilitation of private commerce, a reversion to practices which the Revolution had supposedly abolished. The peasants were again permitted to dispose of their surplus on the open market; previously, when this had been forbidden, the peasants simply refused to grow any more crops than they required for their own purposes, having no incentive to do otherwise. The result, of course, was a protracted and severe urban famine. The state attempted to fight back, by confiscating the peasants' produce, but this of course proved even more counter-productive, since removing all incentive for producing anything at all. Similarly, the more prosperous peasants were again permitted to employ others. (201)

Incentives were introduced in the factories by the N.E.P.; this, of course, is incompatible with equal pay, but it is essential to notice that there is nothing in either Marx's socialist principle, or communist principle which requires this. (202) Nowhere in

Marx's works does he subscribe to any requirement of substantial equality, (203) not even to the extent of the modified egalitarianism of Rawls' difference principle (204), which holds that inequalities of wealth and authority are justified only insofar as they tend to improve the prospects of the least well off. Indeed, the vague egalitarian conception of justice attributed by Lenin (205) (and also by Kelsen (206)) to Marx appears to be a complete misconception. Lenin's thoroughly careless - or dishonest - "interpretation" of Marx's Critique of the Gotha Program is formulated and endorsed by Kelsen thus; "communism will be the realisation of the ideals of freedom and equality, and that means the realisation of justice" (207).

I have already dealt at length with the misconception that Marx identified communism with justice, and if he looked to communism for the securing of equality what can he have intended by the remark to the effect that in communist society all talk of equality will have "become obsolete verbal rubbish" (208).

In any event, as Marx himself points out, different individuals are no more equal in their needs than they are in respect of their capacities for labour (209). In fact, a proper examination of his work reveals that Marx showed little of the tendency to exalt the ultimately incoherent (210) concept of equality as a quasi-religious end in itself, that is so much in evidence in the utterances of his less gifted apostles. In his critique of Proudhon, in which he emphatically rejects all attempts to comprehend ideas in abstraction from the economic conditions which give rise to them, he poses the question, why equality, as opposed to "inequality, fraternity, catholicism, or any other principle" (211) which one might care to name? Certainly, the "equality of labour and equality of wages" (212) with which Lenin appears so preoccupied, is not Marxian. (213) The only trace of egalitarianism in Marx's writings lies in the demand of the socialist principle that all labour is to be evaluated according to the same standard and remunerated at the same rate. The rewards accruing to each individual would of course vary according to the quantity of labour he would choose to perform. Bertrand Russell speaks of "allowing a popular vote to decide ... whether more leisure or more goods were to be preferred." (214)

However, Marx's formulation of the socialist principle would seem to imply that in his scheme of things the striking of the balance between leisure and material goods would be a matter of free individual choice. If one individual would choose to do no work, and consequently receive nothing from the means of consumption, then that is entirely his decision. Russell also writes that "In so far as work has to be enforced, it will be enforced by the criminal law, not by economic sanctions." (215)

but, again, this would appear to be misconceived, for not being entitled to any portion of the total social output as a consequence of deciding to do no work would not be a matter of sanction or punishment, any more than the non-existence of a wall in front of my house is a socially organised "economic sanction" incurred by me for not bothering to build one.

But even this vestige of egalitarianism, the remuneration of all labour according to the same standard, the quantity of labour contributed, seems objectionable; for without any prospect of advancement, no-one would have any incentive to develop or enhance his skills. We are again, indeed, confronted with the crucial difficulty of distributive justice; that the whole matter would be relatively simple if there was a relatively fixed stock of goods and services which were simply there in the nature of things, and the only problem was that of deciding on which basis the distribution should be conducted. However, the difficulty is that the distribution itself affects the quantity of goods and services which are available for distribution. It is vital to recall in this context the role of justice as a means to the bringing of the operation of self-interest into harmony with the common good; for if a rigidly egalitarian standard for the remuneration of labour contribution is adhered to, no-one will be led to master the skills and knowledge which tend to expand the stocks of available economic goods. The advance of technology in the present century has come to require the cultivation of skills which can be acquired only by means of a considerable amount of effort, so that even Marx's rendition of the socialist principle seems totally inadequate in present circumstances.

And in any case, even under machine conditions of production, work would clearly not be homogeneous. Some forms of labour would

remain less attractive than others, so that different occupations would require to be remunerated at different rates, according to the normal laws of supply and demand, if people are not to be coerced into working in particular sectors.

As Hayek puts it,

an authority that fixed remuneration ... could not make these remunerations 'just', i.e. proportionate to desert, or need, or the merits of any other claim of the persons concerned, but would have to offer what was necessary to attract or retain the number of people wanted in each kind of activity (216)

In this connection, it is as well to refer to the view that the refusal to allow people to choose their own line of employment would entail a regression to slavery. (217)

However, it is to Marx's eternal credit that the socialist principle, for all its shortcomings, is not some utopian scheme requiring men to act according to some motivation radically divergent from self-interest. Rather, it is expressive of the severely limited altruism that must be expected from men who have only just emerged from bourgeois society. (218)

In this connection especially, it becomes clearly apparent what a profoundly mistaken interpretation of Marx it is to suppose that he would have approved of the imposition of the communist principle by means of organised force. For, after all, while the actions of individual moral agents are to be evaluated according not to their actual but their intended consequences (219), exactly the reverse holds true for the evaluation of rules and institutions, which are to be judged not by their intended, but their actual results; an attempt to reconstitute society on the basis of the direct correlation of distribution to needs would, in the face of self-interest, be directly counterproductive. Since men would have no incentive to produce, there would be nothing with which to meet needs.

We thus perceive the total lack of suitability of the communist principle as a principle of justice; to be appropriate for this function, a principle must be suitable for imposition, and for this reason, Marx refused to accept it as such.

At least during some phases of human development, distribution having some correlation to labour contribution is a precept having its basis in human nature; self-interest is not therefore a wholly negative factor, but properly directed, it can be a motivating, vitalising force, operating to the general interest. (220) The whole question of communism, then, turns on the extent of the malleability or otherwise of human nature (221); if men do indeed cease to be self-interested under certain conditions, then it follows that the highest form of social life is that in which self-interest gives way to a general unlimited concern for the common good, and in which the use of universal values as a device for the resolution of disputes becomes superfluous, since such disputes cease to arise. (222) If, however, this is not the case, and self-interest to a greater or lesser extent remains as an enduring feature of the human condition, then so also do binding rules of conduct assume the form of an eternal necessity.

The whole spirit of the New Economic Policy and of the system of "state capitalism" instituted thereby is best summed up in the words of Lenin himself, "Personal incentive will step up production." (223)

Self-interest plays a dual role; as an incentive in the development of the instruments of production, and in the act of production itself. In the former role, it becomes unnecessary when in the culmination of bourgeois society, the techniques and instruments of production are brought to full development; in the second, when it is supplanted with the spirit of altruistic fraternity.

The only question which remains is that of whether Lenin's dictum remains true only in certain stages of the cultural evolution of mankind, or is true for always; in Marx's writings, this question is to be resolved by history itself.

(iii) The Withering Away of Law and State.

I propose now to consider further the doctrine of the withering away of law and state, as it appears in the writings of Engels and Lenin, and to a subsidiary extent, in those of Marx

himself.

This doctrine flows from the analysis of the machinery of law and state as an essentially repressive device through which one class imposes its collective interests upon another by means of organised violence, and holds that other class in a condition of economic servitude. Such was the contention advanced by Engels when, with characteristic lucidity, he wrote; "in reality, the state is nothing more than an apparatus for the oppression of one class by another" (224).

Similarly,

the state power is nothing more than the organisation with which the ruling classes - landlords and capitalists - have provided themselves in order to protect their social privileges. (225)

From such a position it naturally follows that the state, as the totality of political power and characterised by the essentially parasitic bureaucracy and standing army, is, far from being an enduring and perennial element of human society, the creature and companion of society divided into classes. (226) With the advent of classless society, then, it becomes both "unnecessary and impossible" (227), since there remains no exploited class to be suppressed.

With the coming of the revolution, the final form of the state comes into being, and from the moment of its inception begins to wither away, and finally vanishes of its own accord. This final form of state is the "dictatorship of the proletariat" (228), a special repressive force by means of which the new ruling class subdues the remaining elements of the bourgeoisie and divests them of their property. (229) If, incidentally, one remains faithful to Marx's account of economic and social development, it seems improbable that the expropriation of the bourgeoisie would degenerate into the arduous and bloody struggle envisaged by Lenin - and indeed by Engels, who describes social revolution as "the act whereby one part of the population imposes its will upon the other part by means of rifles, bayonet and cannon." (230) - since by the march of history, the remaining members of the bourgeois class would have been transformed into a miniscule and hopelessly

outnumbered proportion of the total population. (231)

This then, is the crux of the divide between the "Marxist-Leninist" camp on the one hand, and the anarchists on the other; both factions concur in advancing the liquidation of the political state as the ultimate aim, but differ on the precise route through which this is to be achieved. Against the anarchists, the "Marxist-Leninists" maintain that the state, together with all the social evils attending the exploitation of one portion of the population by the other, cannot simply be thrust aside overnight; the immediate task for the revolutionary proletariat is not to destroy the state, but to seize control of it, and, albeit in a radically modified form, to turn it to their own ends, that is, to the radical transformation of society. As Marx himself pointed out, previous revolutions have not destroyed the state, but merely altered, indeed developed, its character. (232) As the last traces of class society fade away, so also does the state as a centralised coercive order spontaneously wither, as less and less remains for it to do.

Engels appears to suggest the view that all conflicts are class conflicts, and that therefore in the absence of classes, conflicts would cease to arise. (233) This argument, which apparently purports to demonstrate the viability and plausibility of a society based on spontaneous and uncoerced co-operation, as a matter of logical necessity - that is, as if this conclusion can be reached simply by considering the meaning of the terms involved - is, I would contend, incurably naive; the flaw in Engels reasoning consists in his confusing class interest with self-interest.

For, obviously, a society beyond class divisions would by definition lie beyond class interests also, but the wholly separate - and to my mind, highly improbable - thesis that such a society would at the same time transcend self-interest also requires to be established by empirical evidence. However, I am quite willing to concede that insofar as the post-revolutionary order would meet with success in attaining a high level of social stability and prosperity, the incidence of collisions requiring to be regulated, or artificially resolved, by means of a centralised coercive order would be vastly reduced.

Generally more satisfactory, however, is Lenin's explanation that with the removal of the fundamental iniquities

of bourgeois society, spontaneous social cohesion becomes for the first time a real possibility; the anti-social excesses which require to be curbed by organised force are themselves in the main the effects of the estrangement, the brutalisation, the impoverishment, the dehumanisation engendered by capitalist exploitation. Private property necessitates the maintenance of a legal system, but at the same time this self-same "environmental snare" (234) renders genuine social harmony impossible.

The human character is largely determined by environmental factors, so that given decent conditions of existence, people will grow accustomed to behaving correctly towards each other. Engels cites as historical evidence for this proposition the "model colony" established at New Lanark by Robert Owen, "in which drunkenness, police, magistrates, lawsuits, poorlaws, charity, were unknown." (235)

Of course, as we have seen, Engels also cites as evidence his claim that there has in fact existed, prior to the rise of private property, a stateless, lawless community. (236) But this appears to have been far from idyllic, for although this community, even by Engels' account, was not subject to centralised coercion, it was none-the-less characterised by a primitive system of socially recognised rights, enforced by an essentially coercive self-help system. (237)

As the social wounds heal, it is contended, there will arise "a new generation, brought up under new and free social conditions", (238) to which organised coercion will be wholly alien and unnecessary. For people will now naturally adhere to what Lenin describes as "the elementary rules of social life, known for centuries, repeated for thousands of years in sermons" (239).

It is no doubt unfortunate that Lenin considers the substance of these rules to be altogether too obvious to require to be reiterated by him; this omission is doubly regrettable since it would have been a most illuminating exercise to have compared Lenin's conception of communist morality with the "Law of Nature or decent behaviour known to all men" (240) which is so strenuously championed by C.S.Lewis. All the more so, since Lewis proceeds to explain that this "Law of Nature" is in fact a "Law of Human Nature" (241), and it should be recalled that it is a central tenet of

communism that it is in communist society that human nature finds its unalienated and authentic expression. (242)

In any event, Lenin contends that such excesses as may from time to time occur can readily be contained by an informal conventional morality

as simply and as readily as any crowd of civilised people, even in modern society, parts a pair of combatants or does not allow a woman to be outraged.
(243)

It will be recalled that in the Manifesto of the Communist Party, Marx writes that communism abrogates law and religion, thus banishing these phenomena from human society, instead of merely reconstituting them on a new basis; what is interesting here is that he extends this pronouncement to apply to morality also. (244) It should be immediately obvious that this viewpoint, reiterated in the "right and other trash" (245) passage, fundamentally diverges from the account given above, according to which a conventional morality has a central role to play in a communist society. Marx, so it would seem from the analysis given in section (ii), would appear to have proceeded from the assumption that in post-revolutionary society human nature would be transformed and perfected to such an extent that men would abandon the pursuit of self-interest entirely, so that the conditions which necessitate the subordination, voluntary or otherwise, of human conduct to direction by rules, would be wholly dissolved. Insofar as there would remain any relic of social values in communist society, this would take the form of an ethic of spontaneous love, more akin to the precepts of the Sermon on the Mount than to "the rule-bound moralism of the Pharisees" (246).

We have then, a fundamental divide; the crux of the difficulty is that the whole concept of "law and state", which we are assured will wither away, requires further explanation. Is law to be equated with organised coercion? If so, must that coercion be centralised? Or ought law to be understood as possessing as its essential characteristic its nature as a system of norms? What is it that is supposed to wither away, the rules themselves, the coercive apparatus by means of which the rules are enforced,

the formal hierarchy of officials by whom the rules are made, applied, determined and enforced, or some other thing? It should of course be remembered that the definition of the word "law" is one of the most controversial and intractable problems of analytical jurisprudence (247) so that nothing definite can be said about law, without first making clear what one intends by the term. And as to what exactly is to be understood by the phrase "the withering away of law and state", there is clearly only an approximate consensus amongst Marx, Engels, and Lenin.

Engels writes of unalienated generations of post-revolutionary society that "Once such people appear, they will not give a rap about what we today think they should do" (248), so that in an obvious sense, it is futile to attempt to predict, in any detail, the future social arrangements. There is surely, however, some room for analysis of certain of the concepts involved, although this task has been so sadly neglected in the primary sources of socialist ideology.

Engels clearly did not reject the role of societal values in some shape or form in communist society, speaking as he does of the possibility of "a really human morality which stands above class antagonisms" (249) which become possible only in post-revolutionary society. Further, while rejecting the notion of there being a true morality "in the sense of absolute finality" (250), he stated that, nonetheless, in his time the proletarian morality contained "the maximum elements promising permanence" (251).

However, Engels points out that certain values would become obsolete, and advances the following reasoning in support of this contention;

In a society in which all motives for stealing have been done away with, in which therefore at the very most only lunatics would ever steal, how the preacher of morals would be laughed at who tried solemnly to proclaim the eternal truth: Thou shalt not steal! (252)

Clearly, preaching at people, and coercing them, to obey this or any other rule would become unnecessary, where compliance is voluntary and universal, but would this mean that the norm involved had become redundant? On the contrary, the prohibition

on stealing would, as a moral value, find its confirmation, not its dissolution in universal compliance, even though it would cease to require the protection of legal sanctions (253). Indeed, it could form an element in the socialist critique of law as a coercive order that it is an ineffective and second-rate method of protecting moral rights.

Nor can Engels be defended by the claim that stealing will disappear because the institution of property will also be dissolved, for the continuation of the institution of property and therefore the possibility of theft is implied in the assertion that such behaviour, on the part of lunatics, might continue. In any event, to develop my earlier assertion that social forms are to be identified by and with the systems of values on which they are based (254), I would contend that the concept of society is inseparable from the concept of rule-directed behaviour.

There is one pronouncement by Engels which is of particular interest; "in this process (of history) there has on the whole been progress in morality" (255). But by what criterion or criteria does Engels reach this evaluation, and how does he reconcile it to the relativistic position he expounds earlier on the same page? This judgement raises the question of the evaluation of positive values and therefore of social forms by standards ulterior to these, that is, transcendent values by any other name. (256) But if, as Engels claims on the same page, there are no eternal values, what ontological foundation do these second order justificatory principles possess? As Campbell points out,

the question of what rights ought to exist is far from identical with the question of what forms of behaviour are morally right and wrong (257)

but this succeeds only in shifting the problem of absolute vindication one stage backwards. My own views on the matter, and my attempt at a solution, to the general effect that the criteria by which values are themselves evaluated are conceptually determinate, and can be arrived at by means of an analysis of the terms involved, have already been explained (258); but, to my knowledge, Engels does not offer a similar nor indeed any explanation.

Engels would probably have endorsed the socialist justificatory

principles advanced by Campbell (259), i.e. need-satisfaction and utility, but it should be noticed in passing that need-satisfaction as a second order criterion, that is, as a criterion for the evaluation of values, is not exclusively socialist, and is in evidence in the writings of Hayek;

If we wish everyone to be well off, we shall get closest to our goal, not by commanding by law that this should be achieved, nor by giving everyone a legal claim to what we think he ought to have, but by providing inducements for all to do as much as they can that will benefit others. (260)

It will of course be recalled in this connection that I earlier argued (261), by way of an internal critique of the first-order principle of distribution according to need, that such a rule would spectacularly fail in its own object, if it were to be imposed as the basis of the social order.

One important recent contribution to the analysis of the place of normative structures in the socialist utopia is contained in Professor T.D. Campbell's book The Left and Rights, the basic thesis of which is the claim that rights would have a place even in such a society. It should be noticed from the outset that Campbell is not concerned to advocate nor even to evaluate the theory and practice of socialism, but adopts the more limited aim of demonstrating the language of rights to be not incompatible nor essentially alien to the community which is based on co-operation, not competition, and made up of truly social beings, which is to be found in the visions of the socialists. (262)

The argument takes place in two stages; firstly, Campbell seeks to demonstrate that societal norms of some sort would have a part to play even in such a society, and secondly, although this stage of the argument is of lesser importance to this present essay, that at least some of these norms would be creative of rights, as opposed merely to obligations. For, as Campbell states, there may logically be rules and obligations without corresponding rights, but the reverse does not hold. (263)

Further, it should be noticed that if we are to sustain Campbell's thesis concerning the compatibility of rights and

socialism, this does not by itself commit us to abandon the assertion that communism is the supercession of material justice, for the rights involved may be based not on justice, (264) but on need, or utility, to take but two examples. (265) However, the existence of rules and values of any sort raises the possibility of questions of formal justice.

Campbell proceeds by enunciating the various elements in the socialist critique of the concept of rights, and by meeting each in turn.

The first element in the thesis that the concept of rights is inseparable from the pluralistic competitive individualism of liberal capitalism is the argument that rights are an inextricably legal or juristic concept; if this be so, then

rights must be analytically tied to an institution (i.e. the state) to whose abolition or withering away revolutionary socialists are committed both in theory and in practice. (266)

The second element proceeds from the opposite premise; that rights are to be associated with moralistic stances. The argument runs to the effect that moral values, as part of the ideological superstructure, spring from the process of social change, rather than causing it, so that any appeal to moral rights is ineffectual and futile. (267)

But this seems unsatisfactory on two counts. Is normative ideology not an important factor in animating the consciousness of the revolutionary class, and as such vital in persuading them to take "timely political action in line with changes taking place in the economic base of society" (268)?

As such, could not a revolutionary conception of rights be combined with an understanding of "the real determinants of social change" (269)?

Further, if this first objection of mine cannot be sustained and morality has indeed no role to play in the process of revolutionary change, Campbell is surely correct in making the point that (270) one can evaluate social forms according to moral values without being in any sense committed to the assertion that these or any other moral values possess motivating force. The

opposing view, surely, that these two different statements are to be taken as identical, would appear to equate right with might. I may condemn a state of things, but I do not contradict myself if I deny that it can be overcome, or that it is in any way altered by my condemnation.

It should be noticed that the moralism and legalism objections to the concept of socialist rights are incompatible, but they could of course be presented as alternatives. Beyond that, the socialist critique of rights described by Campbell is cumulative. The third element in this critique is the "individualism" objection, which depicts rights as legal powers, and as such weapons in the competitive struggle of self-interested beings, pursuing their separate ends, who are therefore constantly concerned to assert the priority of their demands over those of others. Accordingly, it is claimed that the entire of rights discourse is essentially grounded in the social conflict and constrained selfishness of bourgeois society.

Campbell concedes that rights possess a "close connection with individualism if only because they characteristically belong to individuals" (271), but denies that rights have any necessary connection with self-interest, the necessary connection is merely with interests, which need not be selfish, nor seek to assert themselves in preference to all others. (272)

He is enabled to reach this position by rejecting the power theory of rights in favour of the interest theory, which consists in the analysis that a person possesses a right when there exists a rule (which may be legal, in which case the right is a legal right, or moral, when the right is a moral right) which directs the protection of the furtherance of some interest of his.

This analysis, if correct, opens the door to a socialist conception of rights, in which the satisfaction of the interests thereby protected is identified as the proper goal of communal effort, and establishes that;

The individualism of rights requires no more than an acceptance of the organisational significance of the concerns and projects of sentient beings. (273)

The fourth and final objection is in fact an extension of

the first, and asserts that rights involve corresponding obligations, and that the existence of obligations in turn implies the presence of coercive sanctions;

Rules which establish rights also, typically, impose obligations and obligations, where these arise from positive rules, rest ultimately, it is argued, on force or coercion (274)

This is considered to be unacceptable, for in establishing true community in the place of a society held together only by a combination of selfish ulterior motives and brute force, (275) socialism is supposed to transcend the need for coercion. Campbell proceeds to undermine this argument by denying and seeking to disprove the logical nexus between force and duty, and maintaining that these are separable concepts. For even if we provisionally accept that law is to be defined as a normative order enforced by coercive sanctions, the removal of the coercive sanctions from a system of rules may do no more than deprive it of its characteristically legal pedigree, this would not in itself alter the validity of the rules, and as such would continue to be a source of obligations of one form or another. To say that I have an obligation, in the specifically normative sense in which "obligation" is directly synonymous with "duty" means that there is a determinate course of conduct which I ought to pursue; to be "obligated", to follow Professor Hart's terminology (276), that is, to be under a duty, is clearly not synonymous with being "obliged", i.e. forced to do something, as a moment's reflection will confirm. I may be under an obligation to perform a certain action, but it may be the case that I am not actually forced to do so. Conversely, I might be forced to do something, whilst having no duty to do so, or even while possessing a positive duty not to. One strongly suspects, indeed, that the sanction theory of obligation has arisen solely as a consequence of the equivocation of the term "obligation".

Whereas there is undoubtedly a relationship of some sort between the concepts of breach of obligation and sanction, it is probably erroneous to exaggerate the intimacy of the link, and to make the notion of sanction an essential part of the analysis of obligation. Kelsen tells us that

conduct has the character of a delict (i.e., breach of an obligation) because and only because it is a condition of a sanction. (277),

but surely this approaches the problem from the wrong end; it is surely the case that the visitation of an evil possesses the character of being a sanction because and solely because it is the response to a wrongful action. For example, if we adopt Kelsen's approach, we may be led to interpret taxation as a sanction. On the contrary, if we take delict and therefore obligation as being logically prior to the concept of sanction, we learn that there is no legal obligation to refrain from earning money, and that therefore taxation is not to be interpreted as a sanction or punishment.

These two senses of the term "obligation", corresponding to force and duty, are clearly quite distinct, and are certainly not synonymous. So can a conceptual entailment between the two be established on other grounds? In this respect, those positivists who endorse the sanction theory of obligation tend to fall back on the argument that general compliance with norms can only be ensured by means of coercive sanctions, but as Campbell asserts, this, even if true, does not establish an analytical link between duty and sanction, but on the contrary is a synthetic and

empirical claim which cannot be made unless we can distinguish between legal norms and the sanctions which may be used to back them up. (278)

In any case, this argument, resting on the claim that people will not follow societal rules unless forced to do so, does not appear to be available to the socialist, unless at the cost of contradicting the belief that human nature undergoes a radical change upon the transformation of the productive foundations of the social order. In fact, for a socialist to rely on this reasoning would amount to acknowledging the truth of Hobbes' egoistic vision of human nature and motivation (279) which is so antithetical to the Marxian theory of innate human sociability. It is surely correct, even in bourgeois society, that "sanctions are by no means the sole motivating force affecting the law-abidingness of most individuals" (280) and that

we can conceive of people conforming to behavioural norms without being coerced, where there are norms ... (whose) functions or purpose (is) explained and understood. (281)

The realisation of this possibility, as we have seen, appears to have been the limit of Lenin's ambition, and corresponds most closely to Hegel's vision of rational individuals freely conforming in a society in whose constitution they recognise the demands of universal reason. (282)

Having dealt with these four objections to the concept of socialist rights, Campbell sets out in the next phase of his argument to determine whether rules would have any place in the socialist utopia, and to this end, undertakes "a survey of the variety of purposes served by societal rules" (283), together with an enquiry as to whether any of such rules as may be compatible with or even required by socialism would tend to establish or generate rights. His conclusions can be summarised as follows. Firstly, there would in socialist society be a need for rules of conduct which would be intended not so much to "restrain malicious selfishness" (284) as to "ensure that the human good is protected in ways which are not self-evident to the ordinary benevolent individual" (285) and therefore to enable altruism, or at least sociability, to express itself.

Secondly, where any person, or group of persons, has allocated to them certain goods even for limited purposes or restricted occasions, this allocation could be expressed in terms of rules and rights. As an extension to this principle, being allotted a particular task in the productive process may well generate "functional rights" (286), to the use and therefore possession of such equipment as may be necessary to the effective pursuit of the task in question.

Thirdly, rules which would determine "liberties, claim rights and powers" (287) would necessarily be involved in any attempt to realise particular distributive patterns. Further, the interests thereby protected would effectively be constituted as rights to participate in the social productive process, to a share in the proceeds thereof (288), and so forth.

Fourthly, there would be a need for rules defining standard procedures for resolving differences of opinion as to how the common ends are to be most effectively pursued. (289)

Fifthly, and probably most important, there would be a need for organisation in mature socialist society, which would be characterised by "large scale co-operative behaviour". (290)

This need for organisation would of course be on a far greater scale than any corresponding need under capitalism (291), and would involve a requirement for the common acceptance of norms co-ordinating human conduct, just as, for example, there is a need to establish one side of the road or the other as the correct one to drive on, quite independently of any question of limited altruism or the need for coercion.

It is fully acknowledged by Engels that administration, as opposed to adjudication, will remain as a permanent feature of mature communist society; all that Campbell adds in this respect is that organisation of this kind requires rules

if only to facilitate co-operative and educational activities, and that some of these rules will be directed towards the protection and furtherance of individuals, thereby constituting rights. (292)

Engels draws one conclusion from the need for organisation which is particularly illuminating; that is, that organisation implies authority. "But whoever mentions combined action speaks of organisation; now is it possible to have organisation without authority?" (293)

He is most scathing of the anarchists who equate authority with the state, and therefore reject it as an absolute evil;

Indeed, how these people propose to run a factory, operate a railway or steer a ship without having in the last resort one deciding will, without single management, they of course do not tell us. (294)

To abandon authority, organisation and the subordination of the will of the single individual, Engels tells us (295), is tantamount to abolishing modern large-scale industry, which in the bourgeois age progressively displaces the isolated actions of

individuals in favour of complicated co-operative processes, and to return from modern technology and productive forces to the spinning wheel.

In fact, all this raises the question of

whether there is a valid sense of 'state' in which it is not identified as an instrument for the exploitation of one class by another, but refers to those general administrative arrangements of a society which Engels and almost certainly Marx, assumed would in communist society replace the use of physical coercion. (296)

and of a further role which rules might be required to play in post-revolutionary society, that of

'secondary rules' granting power-rights to certain persons to change and adjudicate on the application of primary rules in accordance with established criteria which are specified in what Hart calls a 'rule of recognition'. (297)

Campbell's speculations concerning "non-coercive jural agencies" (298) tend to find confirmation in the writings of Engels, who opines that;

the most powerful prince and the greatest statesman or general of civilisation may well envy the humblest gentile chief (of primitive communism) for the uncoerced and undisputed respect that is paid to him. The one stands in the midst of society, the other is forced to represent something outside and above it. (299)

No doubt such leaders would also be expected to emerge in the regeneration of human society which would take place after the revolution.

In fact, Engels has presented us with a third possibility, additional to Lenin's theory that communist society would involve an informal, conventional morality, and to the view implicit in Marx's work that all values would become redundant, since superfluous; that of rules being formulated, promulgated, and applied by (non-coercive) political authorities. It will be recalled that I earlier (300) distinguished law from positive morality on

the grounds that while the norms of positive morality spring from social convention directly, legal norms arise also from social convention, but indirectly, that is to say, they are made or posited by agencies which derive their authority from and are themselves the creatures of social convention. If conventional morality can be compared to football in the park without a referee, then the scheme implicit in Engels' vision is analogous to football with a referee, but one who is obeyed by the players out of respect for the rules, and indeed for the referee, without any threat or question of sanctions being invoked. In this respect, the system of norms created and applied by the non-creative jural agencies would be more akin to legal orders than to systems of positive morality, but would differ in the respect of being non-coercive; the question remains as to whether or not coercion is a defining feature of the law. There are here two possibilities; firstly, that coercion is essential to law in the sense that it is a logically necessary feature of obligation, and therefore of any normative order; or that it is a definitive feature of law in that provision for coercion distinguishes law from other forms of normative system.

Campbell, who argues for "the logical possibility of the idea of uncoercive law" (301) contends that Hart's treatment of international law as a sanctionless legal order (302) opens the door to the rejection of organised force as an essential feature of law, even if Hart himself does not pursue his position to its logical conclusion in this respect. There, in fact, does not appear to be any definite conceptual barrier to treating the presence of second order rules rather than provision for coercion as the definitive feature of law. In any case, the matter of whether Campbell has discovered a new type of law, or a new form of normative order, is, I believe, little more than a matter of semantics, for I am more concerned to locate the concepts themselves, than to discuss the names by which they are to be known.

In this section, I hope to have helped clarify the various theories concerning the role, if any, of law, state and morality in fully-developed communist society. As distinct from being superseded altogether, it would seem that in communist society (if it is indeed the only true society, or community) the institution

of societal rules would come into its own; a product of reason, made by and for man, and understood as such by all. It also seems to follow that certain values characteristically associated with justice, as opposed to a morality of altruism - I have in mind norms prohibiting murder or the deliberate infliction of physical injury - would be part of the ethical code of such a society, although presumably these values would be contained in the positive morality of the society, rather than in its legal or quasi-legal system.

It is from this point on that mankind inhabits "the state of rational freedom" (303), dreamed of by Marx from his earliest days.

(iv) Trotsky's Revolutionary Morality; The Ethics of Insurrection.

We have thus far given consideration to the normative structures of post-revolutionary society, and I now propose to conclude this chapter with a consideration of the ethical issues raised by the war of the classes, in which the revolutionary proletariat seeks to bring such a society into being.

Trotsky's position, primarily contained in his essay of 1938, Their Morals and Ours (304), revolves around his discussion and eventual endorsement of the maxim; "the end justifies the means" (305).

His, therefore, is a teleological morality, and as such finds itself in direct opposition to the strictly deontological moralities of Kant and Nozick. (306) According to Trotsky, the rightness or wrongness of an action depends upon the end encompassed by the agent, to the apparent exclusion of all other considerations. (307) One must of course keep in mind the distinction between, on the one hand, the situation in which the means employed has, in addition to the overall aim, an immediate consequence - which is of course itself an end - which, in itself would be wrong, and on the other hand, the simple situation in which there is no such bad immediate consequence, and in which,

therefore, the means requires no justification. Of this distinction, Trotsky says little; it is clear, however, that the supremacy of end over means in fact can be resolved into the question of justifying one consequence (i.e. end) as being necessary to the fulfilment of some other, ethically more significant end. Trotsky's view is presented within an overall context of a class-struggle perspective (308) and those ends which are themselves justified are those which coincide with the aims of the revolutionary class, and as such, the theory holds with social progress. There are, it seems, no constraints upon the permitted means of struggle, other than in relation to the ends served thereby. (309) To the pursuit of the revolutionary emancipation of humanity, even the demands of formal justice are subordinated (310), and the sacrifice of innocent lives (311) is justified.

In defence of his position, Trotsky launches a formidable assault on Kant's categorical imperative (312), and on "transcendent morality" (313) in general, the norms of such ethical systems being "abstract" (314) in the following three senses. Firstly, in that these values are universal (315) and as such applicable equally to all men, and therefore supraclass. Secondly, in that they are general, and therefore equally applicable in all situations in which they are relevant. Thirdly, in that they are presented as being naturalistic and eternal; on the contrary, Trotsky holds, all morality requires to be related to socially evolutionary principles. (316) The abstract values which Trotsky opposes assume the absolute form of "Thou shalt not kill" (317), but, Trotsky tells us, Kantian idealism stands merely as a stage between religion and materialism (318); total and unqualified prohibitions on killing, violence and deception merely obstruct the pursuit of the class struggle, thus serving the interests of the reactionary class and retarding the evolution of human society. (319)

But is there no indispensable core of morality, which is common to and transcends all particular class-based conceptions? Trotsky answers this question in the negative, for not even the right to life is unqualified, since it is in a state of suspension during periods of armed conflict. (320) And class conflict assumes the form of open civil war, with the struggle of the proletariat, in Trotsky's scheme of things, assuming a particularly

acute form of life-or-death struggle against the forces of a reaction, fascism and imperialism. Violence and killing, in a condition of conflict, assume a completely different moral character depending on whether the behaviour in question is directed in the interests of oppression or in the cause of liberation;

A slaveowner who through cunning and violence shackles a slave in chains and a slave who through cunning and violence breaks the chains - let not the contemptible eunuchs tell us that they are equals before a court of morality! (321)

Within the context of Trotsky's theory, as we have seen, there are no limits to the means which the proletariat or their representatives may justifiably employ in seeking to overthrow the bourgeoisie. Trotsky's argument, however, is premised upon the view that the proletarian revolution would involve violent upheaval, whereas this is apparently alien to Marx's completed system (322); certainly, the concept of reaction (323) is an intrusion. This deficiency in Trotsky's writings is evidently due to the fact that, whereas the essence of Marx's thesis consists in the demonstration of the vital significance of economics for human society and its evolution, Trotsky discards this element in favour of a crude class-war conception of social development. (324) However, even if one does not endorse Trotsky's views on class struggle, it seems quite possible to accept his ethics of conflict in general terms, and thus to acknowledge that he exposes a significant weakness in Kantian theory; for few would denounce the killing of the soldiers of a hostile aggressor state by civilians organised into a resistance movement and the killing of civilians by occupying troops in terms of equal vehemence.

There is however, one implication of Trotsky's thesis which is illuminating in relation to the place of ethical values in mature society; since, on Trotsky's terms, such a society would have risen above class struggle, would not a system of abstract norms along the lines envisaged by Kant become appropriate? It would certainly seem that a supraclass morality would come into its own in the first supraclass society. Consider the following pronouncement by H.B. Acton;

But morality, according to Kant, is not concerned with the interests of a limited group, but with the possibility of a universal community of free men (325)

It is surely a community of this sort which Trotsky believed that the revolution would establish; in a society no longer divided into social classes, Trotsky's objections to Kantian moral philosophy would cease to be relevant. There would appear to be no further reason why universal, abstract norms of conduct could not apply when there is no longer an overriding justificatory telos to be established. Trotsky himself asserts that "Norms 'obligatory upon all' become the less forceful the sharper the character assumed by the class struggle" (326)

Conversely, one might argue, such norms would grow the more forceful, and indeed completely so, in the society which is beyond class struggle. All the more so, since Kant's system seems competent only to provide us with first order norms; this conclusion would appear to neatly coincide with Lenin's version of the doctrine of the withering away of law and state (327), according to which post-revolutionary society would be held together by a simple informal conventional morality. It will be recalled that in the first chapter of this essay (328) I advanced the view that the division of ethical theories into those which are deontological and those which are consequentialist is not a division which can be sustained absolutely; this view is now reinforced, for it would seem that the telos encompassed by Trotsky's consequentialism is itself of a deontological nature, while, in general, proponents of overtly deontological systems advocate consequentialist measures for the preservation of their favoured orders. It would seem that we have not been perceiving two different objects, but merely the self-same object from opposite directions.

Further confirmation of this last conclusion would appear to be afforded by the consideration that abstract ethical principles are, after all, required in order to establish which of two contending factions is in the right to begin with, and hence, to determine which end justifies the means to it. Trotsky speaks of the "dialectical interdependence of end and means" (329).

This imposing sounding phrase signifies nothing more than the fact that what is an end in relation to a particular means,

turns out to be itself a means to a further end, and so on, back to the ultimate end in relation to which all else is justified. But it is this end which I have said can only be justified by an abstract moral principle, since it is not itself a means to a further end. Or, as Trotsky puts it, "Moreover, the principle the end justifies the means naturally raises the question: and what justifies the end?" (330)

The answer which Trotsky supplies is as follows;

the liberating morality of the proletariat ... deduces a rule for conduct from the laws of the development of society thus primarily from the class struggle, this law of all laws. (331)

However, it should be noted that even if there are historicist laws of social development, these are not prescriptive, but descriptive, laws, akin to, for example, the law of gravity, rather than to anything normative. Thus, it would seem that Trotsky's argument is fatally flawed, since it is built on the equivocation of the two senses of the word "law". On this elementary error (332), Trotsky's argument rests, and falls.

"The vicissitudes of class struggle strip the state of every pretense to impartiality and transform it into an acknowledged tool of factional interest." (1)

(i) Revolution versus Reform

Thus far, I have sought, inter alia, to describe the course followed by human history, together with the attendant sequence of ideologies, until and including the age of unrestrained capitalism, in which Marx himself was writing. In this, the concluding chapter, I intend to assess the phenomena of the present age, in the light of the concepts which I have outlined in the first four, my aim, in part, being that in the course of this exercise, the concepts of justice and Right, and the relationship between these two, shall come to assume clearer forms.

The first question to present itself is that of the relevance of the Marxian critique of capitalism, more than a century after the death of Marx, an enquiry which in turn leads us to consider Marx's analysis of the path which he believed was being followed, in his lifetime, by world history. From at least 1858 (2) Marx held the conviction that the capitalist epoch had almost run its course, and that the socialist revolution would shortly come to the economically advanced nations, such as England and Germany, which would in turn set out to liberate those lagging behind in the march of history. (3) He held that, leading up to the revolution, wealth would become concentrated in fewer and fewer hands (4), with the corollary that the proletariat would come to comprise a progressively larger proportion of the population (5), that the gulf between the two main social classes would grow increasingly pronounced (6), and that the cycle of economic slumps and booms would grow more and more acute. (7) He also claimed that in this movement the bourgeois age was unconsciously preparing the way for its own supersession, not only in effecting the full development and socialisation of the processes of production (8), but also in

breaking down national barriers, through the economic uniformity implied by bourgeois free trade. (9) It is now a commonplace that world history has proved most reticent in recognising Marxian theory in any of these respects. (10) It seems undeniable, therefore, particularly since the radical instability culminating in revolution has thus far been averted, that if Marx's vision of the human destiny is to be retained at all, it can be retained only in a considerably modified form.

Chief among the reasons for these failures, I believe, is the philosophical inadequacy of the "historicism" which Marx inherited from Hegel. Hegel conceived of history as "a rational process of development" (11) and as such subject to ascertainable dialectical laws of motion, such that the knowledge of those laws affords a basis for the prediction of future trends together with the end to which history is tending, in much the same manner as a theoretical grasp of the principle of astronomy enables astronomers to issue precise forecasts of eclipses and so forth. (12) In Marx's hands, this evolutionary conception was shorn of the religious and mystical overtones which it had held in the Hegelian system, and was reformulated in accordance with Marx's view that it is economic factors which crucially direct the structure and development of human society. (13) Hence, Marx wrote of Capital that "it is the ultimate aim of this work, to lay bare the economic law of motion of modern society". (14)

In my submission, as I have already asserted, (15) this form of historical determinism, with its preoccupation with "necessity" (16), or fate, or destiny, by any other name, owes much to the misconceived displacement of dialectical method from conceptual analysis, to the analysis of real movement. This error consists in the equivocation of "development", in the strict, logical, sense of movement towards the Ideal, with "development", in the loose sense, connoting movement, not in the world of concepts, but in the world of objects. By this means, it can be made to appear that world history proceeds steadily towards the Ideal, and that all along, this has been an inexorable tendency driven on by absolute reason in the form of necessity.

At this point, it would perhaps be useful to state that the present essay sets out to describe the development, in the

strict sense, of human culture (17), and by no means attempts to claim that such a path is necessarily followed other than in the ordering of Ideas. Thus, for example, Hobbes' state of nature (18) is the logically necessary starting point in this conceptual odyssey, independently of whether such a condition of things, in the sequence of real events, ever existed.

With specific reference to Marx, his vision of the human destiny was intimately linked to what he took to be the original and authentic form of the human condition. Marx's position on primitive communism, and the innate sociability of man, which, as I stated earlier (19), seems distinctly unsatisfactory, provides the basis for the condition of things which Marx believed must sooner or later re-assert itself. It is in this respect that Kelsen considered that Marx and Engels had failed in their objective of promoting communism from "a utopia to a science" (20), in that their conclusions concerning the human destiny rest upon a subjective and unsupported value judgement as to mankind's natural condition. They purported to have demonstrated that communism is not to be manufactured, but to be discovered as imminent in social reality; but

this scientific discovery is possible only because the allegedly discovered value has previously been projected into reality, the Marxian reality with a double bottom. (21)

Therefore, in that this doctrine of the perfectability of human nature is an essential element in the Marxian system, it is to be doubted whether Marxian theory represents any real advance on the utopians at all, that is, those

wild and mad-headed enthusiasts, whose silly speculations and absurd paradoxes, are not worthy of the attention of any reasonable man. (22)

There are, it seems, several flaws and logical inconsistencies in Marx's reasoning, which go some way to explaining why events have not followed the course anticipated by him. There are, for example, the factors discussed by Adolf A. Berle Jr. in his article "Marx was wrong and so is Khrushchev" (23); firstly, there

is the rise of the labour unions, which have "refused to try to seize the ownership position or take over government" (24) but have, instead, restricted themselves to the task of securing a higher proportion of the productive output for their members, through a process of free collective bargaining. Secondly, there is the development of "corporations", or public limited companies. As Berle points out, an ever increasing scale of operation in industry in no way necessarily implies that the ownership function is concentrated in progressively fewer hands, and, in fact, a considerable dispersal in the range of the distribution of industrial profits has taken place. (24)

But, more fundamentally, there is one factor, the third of the elements advanced by Berle, which "changed both the direction and structure of affairs." (24) This is the expansion of the politically organised community, the state, both in respect of its sphere of operation, and of the range of its elective franchise, a development which, I would contend, renders economic determinism, in any form, implausible; for, in assuming a measure of control over the macroeconomic environment, the state restores an element of will, and therefore of unpredictability. Economic forces, invested with life by the "invisible hand" mechanism (25), although confronting the isolated individuals as external necessities, merely await rational direction by the state, and such direction is by no means exclusive to post-revolutionary society.

It is specifically my contention that society has been progressively and qualitatively transformed by the emergence of the modern social democratic welfare state, so that any analysis proceeding from the premiss of unrestrained capitalism as the social foundation is now totally inadequate. Throughout the main corpus of the writings of Marx and Engels, there runs a strong suggestion of the impotence of the political state to influence or modify social reality (26), but on the evidence of modern developments, such a view can no longer realistically be sustained. Related to this is the bankruptcy of the Marxian theory of the state as the means through which the owners of the means of production impose their collective will or class interests on the remainder of society; it must surely be self-evident from even the most cursory scrutiny of the mass of social and welfare legislation which has

been passed in recent decades throughout the western nations that to characterise the state as "the national war engine of capital against labour" (27) is now, at best, a gross oversimplification, and, at worst, completely false.

Since the latter half of the nineteenth century, the bourgeoisie has deemed it necessary or prudent to bring the proletariat into the political arena, for example, as a sort of bribe to induce support and co-operation in times of war (28), much as the mediaeval kings of England found themselves obliged to enfranchise the great lords, when financial assistance from these persons was necessary. (29) With this development, the class struggle has entered an entirely new phase (30), and subsequent history has provided ample justification for Engels' characterisation of the universal suffrage as "an instrument of emancipation" (31), in that the state has, in the hands of the people as a whole, proven a potent means to the realisation of a number of specifically socialist ideals, without the proletariat being first required to assume direct control over and responsibility for the means of production. To enumerate those socialist ideals which have been thus attained, direct provision for basic course-of-life needs, or a "reasonable social minimum" (32), in the form of social security legislation (33), free education (34), free health care (35), subsidised housing, provided through local authorities (36) and centralisation of certain of the means of communication in the hands of the state (37) have all become established facets of the social order prevailing in the present-day United Kingdom. The principle of allocation of economic goods according to need is also in evidence in the progressive income tax system. (38) Resources are also redistributed to meet not only individual needs, but also social needs, such as public health (39), planning of land use (40), maintenance of highways (41), prevention of monopolies and restrictive trade practices (42), the maintenance of a uniform system of weights and measures (43), and education, as already mentioned. Present day society has moved far from the sanctity of private property; high levels of taxation, and planning and compulsory purchase (44) legislation epitomise the subordination of individual property rights to wider social objectives. (45)

One of the most prominent recent contributions in this

field is the thesis presented by Professor R.M. Unger in his book Law in Modern Society (46), in which he identifies the modern epoch as "post-liberal society" (47), representative, in essence, of the rise of corporatism, and departure from the rule of law ideal. This ideal, Unger tells us, consists in the principles of the generality and autonomy of the law. (48) Corporatism is to be understood as entailing the breaking down of the sharp division as between the law and state on the one hand, and society on the other. (49) The law thus becomes, with the expansion of state activity, an instrument of positive macro-economic and other social ends; the essence of the welfare state, according to Unger, lies in the emergence of the involvement of the state in tasks of "overt redistribution, regulation and planning". (50)

This analysis broadly converges with Hayek's pronouncements concerning the progressive transformation of society from a "spontaneous order" of individuals in a condition of liberty, to an organisation, involving private law, the law of just individual conduct, being to a substantial extent replaced with public law, the law of subordination. (51) Indeed, there is more than a grain of truth in Berle's characterisation of the modern state as a "socially directed commonwealth". (52)

Under the corporate state, therefore, legal regulation attains to a higher level, in that the law is no longer merely a framework of rules within which spontaneous interaction takes place, but actually seeks to regulate the interaction itself. We are thus presented with the abandonment of group pluralism, consisting in a comprehensive and conscious programme of legislative intervention on behalf of such social categories as employees, tenants and debtors, or in class terms, the non-owners of the means of production and exchange. (53) The "reverse preferences" (54) which legislation of this sort frequently makes use of relieve the various individuals benefitted thereby from the burden of negotiating their own agreements, and amount to a statutory recognition of the spuriousness of formal freedom of **contract**. (55)

Turning specifically to the dichotomy of revolutionary and reformist socialism, it can be seen that the latter connotes "abandonment of the revolutionary goal" (56) in two distinct senses. This corresponds to two separable senses of "revolution",

the first of which signifies the forcible displacement of a political constitution (157), and not merely radical legislative change without any attendant challenge to established criteria of formal legal validity; the second signifies the radical transformation of the economic structure of society, consisting, for example, in the wholesale social appropriation of the means of production. Revolution in the second sense may or may not simultaneously be revolution in the first. Thus, socialism can be described as reformist in that it repudiates the violent seizure of political power in favour of participation in the democratic process (58), or in that it abandons the central Marxian aim (59) of the conversion of the means of production to public ownership.

Although his earlier stance on this question was less unequivocal (60), it is clear that towards the end of his life Marx vigorously opposed reformism in both its aspects. (61) After Marx's death, however, Engels gave considerable encouragement to the rising view that socialism could most expediently be brought about through the "successful utilisation of universal suffrage" (62), and that by this means the state could be fashioned into the primary instrument of the proletarian will, the dictatorship of the proletariat. Certainly, in light of Marx's belief that the inherent laws of capitalist production were operating to increase both the number and militancy of the workers, it is far from clear why he regarded the forcible seizure of the state as necessary when all the time, on his terms, the march of world history was delivering it into proletarian hands.

As to the second strand of reformism, it is this which has been the direct inspiration for the modern legislative developments which we have been considering. How closely these satisfy Marx's vision of the human destiny can be discerned from his comments in the Circular Letter to Bebel, Liebknecht, Bracke, and Others, in which he speaks of

all sorts of petty rubbish and the patching up of the capitalist order of society in order at least to produce the appearance of something happening without at the same time scaring the bourgeoisie (63)

and, of

those petty-bourgeois patchwork reforms which, by providing the old order of society with new props, may perhaps transform the ultimate catastrophe into a gradual, piecemeal and as far as possible peaceful process of dissolution (64)

Hayek would appear to corroborate this analysis; he draws attention (65) to the fact that although the demand for public ownership of the means of production was formerly a definitive element of socialist doctrine, this demand has come to be regarded by socialists as simply a means to the introduction of a "just" distribution of wealth, and not as "the way, the truth, and the life" (66) of social transformation. Accordingly, since recognising that much the same redistributive end can be just as conveniently pursued through piecemeal adjustment of the outcomes of the market process by the interventionist state, the demand for the more radical social reconstitution has been substantially shelved in favour of "social justice" (67), with its attendant ideology of various social and economic rights, which are essentially redistributive in orientation. Marx's (unfavourable) view of the distributivist tendency are made unequivocally clear in The Critique of the Gotha Program.

It was an important strand in the Marxian critique of justice (68) that in the hands of the reformists "justice" was bound up with the approach which seeks to do nothing more than to strike a fair (whatever that might be) balance as between the contending class interests, the very oppositions that were in the revolution to be transcended. It must of course be recalled that in Marx's theory, in common with all other evolutionary theories (69), opposition and conflict play a vital role in the process of development, so that striking an artificial peace merely operates to the impediment of the evolutionary process. The reformist legislation which we have been considering, which concerns itself not merely with formal rules, but with the positive regulation of social antagonisms, is a very curious creature indeed, since it simultaneously negates and yet perversely reasserts the bourgeois conception of justice and bourgeois social relationships. Social

security legislation presupposes an underlying social insecurity, labour laws regulating the hours and conditions of work presuppose the survival of the wage-labour system, and, in the same manner, the Rent Acts hold the ring between landlord and tenant. This further illuminates the doctrine of the withering away of law and state (70), for with the supercession of these divisions, laws devised to contain antagonisms no longer existing would be deprived of both function and meaning.

Consider in this light the "right to work" (71). It is difficult to see what significance this right could have in a society which had transcended the absurd economic conditions which give rise to the involuntary unemployment of able-bodied workers. In any case, as Campbell observes, such a right would be much less important in mature communist society, since in that society, whose characteristic principle is distribution according to need (72), the recipient of course-of-life needs would no longer be dependent upon the opportunity to dispose of one's labour. (73) Similarly, Raphael points to the fact that equality of opportunity implies competition, and could therefore surely not be applicable to a society based upon unrestricted co-operation. (74) It would seem, then, that social and economic rights such as these can only exist as transcendent norms, to be invoked in criticism of capitalist society, or else are incurably reformist.

In any event, the central question becomes this; are the legislative developments which characterise the modern age to be attributed to reformist socialism, or to a neo-classical attempt to preserve the capitalist mode of production from collapse, or to a convergence of both? The third of these possibilities envisages opposing intentions coinciding in their external effects. Clearly, the attempt to implant specific social objectives, notably the provision for individual and social needs, which of course entails substantial incursions on the formerly sacrosanct principle of private property, is socialist in the sense of being antithetical to individualism. However, when one has regard to such aspects as the maintenance of a competitive market by means of monopolies legislation - a role for the state which Hayek by implication (75) deems to be legitimate -, the redress of imbalances in bargaining power, and the general policy of making the law more accessible to

all (76), through legal aid, simplified court procedures, state financed advice centres and so forth, cannot these phenomena be interpreted as an attempt to make bourgeois society operate as according to its apologists it ought to? This line becomes all the more plausible, since we find protected here the cardinal bourgeois virtues of free competition (77), freedom of contract, and equality before the law.

And, as was earlier remarked, government can and does, by means of a few simple monetary and fiscal adjustments, eliminate the worst excesses of economic instability even within a capitalist economy. (78) After all, even Adam Smith (79) conceded to the state a role in perfecting the workings of the invisible hand; while there is much in contemporary western legal systems which may at first sight appear broadly socialist - redistribution, fair trading laws, restrictions on monopolies and so forth, but which is perhaps best comprehended as part of a general scheme of things by means of which the competitive mechanism is left intact, but kept under control in order that any shortcomings in its operation may be rectified. Indeed, it would appear that it is this principle which Donaldson identifies as being the factor which distinguishes the social democracy from the command economy;

In principle, Keynesian techniques are decidedly gentlemanly. They consist of general manipulation of the major variables in the economy rather than specific and selective direct controls. (80)

Neo-capitalist tendencies are in fact strongly in evidence in Keynes' theories. Thus, William J. Barber writes;

Some critics regarded Keynes's doctrine as dangerously radical and as a threat to the perpetuation of the capitalist order. A considered judgement of the content of Keynes' thought supports quite the opposite conclusion. (81)

For, although the implementation of Keynesian macro-economic policy has entailed substantial incursions upon the principle of private property, Keynes in fact considered that this strategy embodied precisely those types of reform which would have to be

made if the characteristic merits of capitalism were to be maintained in any recognisable shape or form, and in particular in order to eliminate the social unrest created by mass unemployment. Here at least we find some vindication for the view that the modern welfare state is no more than a cosmetic exercise, a means to

maintaining the stability of a system which would otherwise collapse under the effects of its inherent self-destructiveness (82)

in the interests of the ruling class, and to providing a workforce which is healthy, docile, and educated in the desired skills, and, when necessary, maintaining redundant sections of the workforce intact for later use. It at least becomes clear that social reform can be by no means a gospel for one class alone (83); after all, if the necessary consequence of unrestrained capitalism is its own demise, then indefinite resistance to change can scarcely be said to be in the interests of the capitalist class.

Indeed, it would seem that neo-capitalism can be represented as presenting a modified version of Hayek's thesis (84), consisting in an expanded view of what activities the state must undertake in order to provide "the precondition for the success of most private activity" (85) and on the foundation of which the interaction of free private individuals will function as a "spontaneous order". (86)

We have, in fact, arrived at a condition of things which is best explained as a convergence of reformist socialism and neo-capitalism, though for quite different motives, upon the same results. Whatever evaluation one places on this state of things, the fact remains that it is impossible, or at least extremely difficult to reconcile with the Marxian conception of history.

Consequently, by 1890, "historical materialism" (87) was already in a state of crisis. In an attempt to make the theory fit the facts, Engels found himself obliged to put forward a severely modified version, in terms of which he made a number of important concessions. Firstly, he acknowledged that the economic element is not the only influence which conditions human history and culture (88); he recognised the relevance of, for example, geographical factors (89). Secondly, he accepted also that

there is a significant volume of ideology for which no meaningful economic explanation can be found. (90)

Thirdly, Engels conceded that the ideological superstructure can react back upon the economic base of society, so that the relationship between the two is no simple one-way movement. (91) Political power is itself an economic force (92); thus, the law of inheritance

react(s) back, however, on the economic sphere to a very considerable extent, because (it) influence(s) the distribution of property. (93)

The relationship between the economic structure of society and its ideological forms is now conceived of by Engels as a mutual interaction; to this he adds, rather vaguely, that the sphere of economic activity is "the ultimately determining element in history" (94) to which the interaction is subject. Engels concludes his letter to Joseph Bloch in singing the praises of Hegel and the dialectic, but it seems that by now the latter had come to signify for Engels nothing more remarkable than the mutual interaction of economics and ideology. (95)

When the materialist conception of history is diluted to this extent, it is probably approximately true, but it is also uncontroversial. It is not surprising that Singer was later to remark that in Engels' hands historical materialism had degenerated into a hopelessly indeterminate formula from which anything at all could validly be deduced. (96)

(ii) The Frontiers of Justice.

It is to be hoped that it will now prove possible to bring together all that we have thus far concluded to be true of the Idea of justice, and hence to present a systematic and coherent vision of that Idea together with its conceptual limitations.

In the most general terms, and at a minimum, justice is a normative absolute (97); thus, for Lenin (98), as we have seen, justice connotes a condition of things, an ordering which in some sense conforms to how things ought to be, and marked, one would

suppose, by the absence of injustice. Justice emerges into a more clear and determinate form, in the writings of, for example, Rawls (99) and Raphael (100), by whom it is additionally perceived to possess the characteristic of being a normative order, that is, a system of rules and values. For Hayek (101), justice is a norm of human conduct, by means of which, and by means of which alone, an in principle unlimited number of competing, self-interested individuals are enabled to live in society, that is, in that condition in which each is substantively free to pursue his own chosen objectives. It transpires therefore that the substance of justice coincides with that system of first-order norms which can be inferred as affording the resolution of those objects which characterise Hobbes' state of nature model. (102) As I demonstrated in chapter 2 (103), political unity, when attained only within a limited faction, is swiftly transformed into its opposite, in that it serves only as the precondition for disunity reasserting itself at a higher level; from this, I would argue that justice is made real only when the Kantian requirement of universality is satisfied through the establishment of a single world order.

I see no motive for departing from Hayek's vision, duly modified along the lines suggested in section (i) of the present chapter, particularly since Marx appears to have conceived similarly in constructing his critique of the concept of justice. (104)

Justice thus conceived of as a "principle of liberty or freedom subject to constraints" (105) is an essentially private law (106) concept, bearing with it the connotation of suitability for imposition (107), and is a rule of personal interaction defining a spontaneous order, as opposed to that corpus of rules pertaining to the arrangements by means of which that spontaneous order is preserved. (108) It is that pure deontological order which possesses itself as its own perceived telos.

In chapter 4, I concluded that it is an inherent characteristic of the concept of justice that it embodies a systematic recognition of the postulate of self-interest. (109) This principle is in evidence both in justice in holdings, and in retributive justice, and is a conclusion which is by no means antithetical to Marxian theory. (110)

It was also demonstrated that justice contains as part of its necessary minimum content a law of property delineating exclusive claims legitimately asserted by individuals over particular material objects (111); by extension, it was conceded to Nozick that we can also derive as part of the necessary minimum content the transferability of entitlements (112), with all that follows from it. As we have seen, (113), the socialist conception of justice in holdings, consisting in distribution in proportion to labour contribution, represents the assertion of the first of these three principles, that is, systematic recognition of self-interest, to the total exclusion of the third.

Justice is that juristic core of the normative order which relates directly to an individual's entitlements over the integrity of his person and his property, and is as such narrower and more determinate than that wider parameter of societal norms into which is thrown all that we conceive of as morality. As we saw earlier, in speaking of those "moral duties of a weaker, and non-juridical nature, not creative of corresponding rights in others", (114) a person can be said to act selfishly, or churlishly, and in many other respects immorally, but in so doing, so long as he does not act outwith his entitlements, he cannot be said to act unjustly.

Justice, then, is that rule of conduct, which, ideally, governs the relations of interacting individuals. By extension, the rules of formal or natural justice are those which are required to be observed by judicial agencies in the application of substantive norms.

Additionally, justice should also govern relations between the individual and the state, except where its requirements are overridden or placed in suspension by more fundamental considerations, as when, for example, cargo is thrown overboard to save a sinking ship. (115) What these more fundamental considerations are, falls, in part, to be determined by means of direct reference to the function which rules of conduct play in human affairs. It will be recalled from chapter 2 (116) that the objectives involved in this function are as follows, in decreasing order of generality;

1. The advancement of the demands of sentient will.
2. The reconciliation of subjective and objective rationality.

(117)

3. The maintenance of security of person, possession and exchange.

We firstly encounter the paradox that positive rights of security require the maintenance of a public law enforcement machinery, the costs involved in which necessitate incursions into the entitlements thereby protected. (118) Justice cannot survive without this machinery, and it was in part for this reason that I argued in chapter 3 that Nozick's attempt to subsume the entire of the normative order within a single system of first-order precepts could not be sustained. (119)

The essential one-sidedness of the concept of justice grows clear, and it passes over and is absorbed as a subordinate moment in the wider totality of Right. It is Right thus conceived which is the colossus that bestrides the myriad variety of particular subjective wills, bearing the scales in one hand, and the sword in the other. In order that justice may flourish, its various institutional prerequisites must be preserved from attack, from within, in the form of criminal activity, and from without, in the form of external aggression. With the establishment of a single world order, (120), however, only the former would survive.

The second limitation which we encounter arises in the form of the difficulty that competitive interaction, even within the framework of rule-governed behaviour, generates further impersonal forces, particularly in the sphere of economics (121), and to the extent that this state of affairs is permitted to flourish, Right is unsuccessful in its itinerary^{at} of effecting the resolution of the tension between subjective and objective rationality. It was in the light of this consideration that I argued in section (i) of the present chapter that we have to establish an expanded conception of those activities which the politically organised community, the state, must undertake in order to provide a framework within which free and spontaneous interaction can take place. The establishment of a single world order would provide us with the means whereby externalised social forces could be repossessed, and our deliverance from destructive chaos secured.

Thirdly, provision requires to be made for those who through no fault of their own are unable to fend for themselves. Following the line of approach suggested by Professor T.D. Campbell

in his article "Humanity before Justice" (122), I would contend that proponents of welfare rights conceptions would be more ontologically correct to base their claims not upon justice, but rather upon humanity, understood as a more fundamental ethical consideration overriding justice.

Justice and direct need-satisfaction are two entirely separate matters, not least for Karl Marx, in whose vision of the emergence of a communist society with direct provision for individual and social needs as its foundation, this transformation represents not the realisation but the supercession of justice. (123) Justice is a system of rules designed for the regulation of the competitive interaction of self-interested individuals, and therefore direct provision for needs must be alien to it, since, as we have seen (124), attempts to impose need satisfaction as the basis of the social order, are, in the face of self-interest, unavoidably counter-productive and therefore self-negatory. Welfare rights, therefore, can only be understood as a partial qualification of the bedrock of strict entitlement, made on behalf of those who cannot be expected to participate in the competitive process upon which the concept of justice is premised. It will be recalled that the ineluctable foundation of Right is will, and need is will in its most immediate and pressing form. Where justice visibly fails in its itinerary^{av} of providing the means whereby people are substantively free to satisfy their most basic needs, it must, superstition aside, give way.

We in fact arrive at an effective inversion of Nozick's conception, in terms of which considerations of justice place absolute constraints upon action, whereby the operation of justice is itself held to be subject to certain constraints. One could, indeed, go on to enquire as to whether these constraints are absolute. In this light, it may indeed transpire that human rights are fundamental rights, and that these refer directly to the second-order criteria by means of which particular values fall to be evaluated, and that these are not after all to be founded upon justice, (125) but upon those other species of evaluation which we have identified as being "above this sceptred sway" (126) of justice, such as humanity.

The extent to which justice requires to be overridden by

more fundamental ethical considerations will be the greater the more imperfect the conception of justice; we must carefully distinguish between modifications which require to be made to correct defects in particular, imperfect, conceptions of justice, and to the concept of justice itself. Thus, for example, if the spontaneous order defined by the rules of justice were made perfect, the question of the unemployment of, and the need to make direct provision for, able-bodied persons simply would not arise.

Even in perfected world order, however, it would be necessary for the politically organised community to make provision for those who are, through age, infirmity and so forth, unable to work, to provide for the maintenance of law and order, to regulate the macro-economic process, and to provide those various other social goods which spontaneous interaction cannot, and to that extent, it might appear that the need to raise public funds must always operate as a qualification of the various entitlements secured by justice, and that, therefore, the conflict between general social order and justice in government policy referred to by Rapnael (127) must remain as a fixed attribute of political association. I would suggest, however, particularly since world unity would eliminate the need for defence expenditure, that sufficient funds for necessary state activities could be raised by placing a charge upon the appropriation of hitherto unowned primary material resources and upon the occupation of land. This arrangement, under which all particular property entitlements would be contingent upon the ultimate sovereignty or title of the world state, would of course possess the additional merit of resolving the problem of original acquisition, which in chapter 3 I held to be absolutely fatal to Nozick's thesis. (128)

There will be those, of course, who will protest at my no doubt peculiar, idiosyncratic and certainly unorthodox usage of the terms "justice" and "Right". For my part, I must confess that the names which we confer upon objects of thought are, in the last analysis, wholly arbitrary. The objects themselves, however, are not, but present a fabric, an ordering of Ideas, which is absolutely objective, and in no way contingent upon the conscious human mind.

Footnotes to Chapter I.

- (1) J.L. Mackie, Ethics (Inventing Right and Wrong) (Penguin Books Ltd., Harmondsworth), 1981, p. 106.
- (2) The usage is adapted from the German "Recht", as in Hegel's work, Rechtsphilosophie, or as T.M. Knox's translation renders it, Philosophy of Right (Oxford University Press), 1979, the term "Recht" possessing no conventional direct equivalent in the English language. c.f. John Kemp's The Philosophy of Kant (Oxford University Press, 1979, p. 84). The term is further explained at p.vi of the translator's foreword to Georg Wilhelm Friedrich Hegel's Philosophy of Right, where it is identified as embracing state law, positive morality and ethics. See also Peter Singer, in Hegel (Oxford University Press), 1983, at p. 25. In the present essay, "Right", like "justice", denoted a conceptual absolute, the former being the broader of the two, and including the latter. For now, the two usages shall be used more or less interchangeably, and no harm will be done for present purposes if the reader regards them as being effectively synonymous until chapter 5, where their relationship will be examined in detail.
- (3) For an explanation of the terminology employed in this sentence, see the section of this chapter entitled "The Dialectical Methodology", at p.32, post.
- (4) Thus, for example, by this means, "historicist" theories can be constructed which apparently prove that historical movement tends of necessity in the direction of the Ideal, this result being achieved simply by projecting the concept of forward motion, implicit in the meaning of the word "development", onto real process. c.f. Ch.5, p. 169, post.
- (5) See generally Philippa Foot, "Moral Beliefs", reproduced at pp. 83-100 of Theories of Ethics, ed. Philippa Foot (Oxford University Press), 1967. For a striking example of the word "oppression" as such a morally loaded term, c.f. George Novack, Liberal Morality, in the anthology Their Morals and Ours (Pathfinder Press, New York), 1979.
- (6) (University of California Press), 1957
- (7) Cf. E.R. Emmet, Learning to Philosophise, (Penguin Books Ltd., Harmondsworth), 1968, pp. 85-108.
- (8) This theme is developed in chapter 2., post.
- (9) The concept of order is best expressed by means of the German term "ordnung", which bears the specific technical connotation of "coherent system". cf. Kelsen's The Pure Theory of Law, from The Law Quarterly Review (Stevens and Sons, Ltd.), Vol. 50, October, 1934, p. 476.
- (10) For an explanation of the significance of the term "delegation", see Hans Kelsen, in General Theory of Law and State (Russell and Russell, New York), 1973, at p. 401. "Subsumption" is

explained by Hegel at p. 16 of Philosophy of Right, as the deductive element in formal reasoning; "a system of positive law must necessarily involve the application of the universal concept to particular".

- (11) This conceptual relationship is explored in the section entitled "The Dialectical Methodology", at p.33, post.
- (12) See generally Lloyd, The Idea of Law (Penguin Books Ltd., Harmondsworth), 1974, pp. 119-125. See also Neil MacCormick, Legal Reasoning and Legal Theory (Clarendon Press, Oxford), 1978, p.73.
- (13) See on this Ross's essay Tu-tu, which is reproduced at p.556 of Lord Lloyd's Introduction to Jurisprudence, 3rd edition, (Stevens and Sons Ltd., London), 1972.
- (14) See also Tom Campbell, at p.26 of The Left and Rights (Routledge and Kegan Paul, London), 1983.
- (15) cf. J.R. Searle, "How to Derive 'Ought' from 'Is' ", Philosophical Review 73 (1964).
- (16) See generally chapter 4, post.
- (17) cf. The Republic (Penguin Books Ltd., Harmondsworth), 1980, p.33.
- (18) Lloyd's Introduction to Jurisprudence, p.271, footnote.
- (19) Against this assertion, Fuller advances the concept of "the minimum content of a substantive natural law", this opposition forming an important element in his ongoing debate with H.L.A. Hart. See for example that passage from Fuller's The Morality of Law which is reproduced at p.138 of Lloyd's Introduction to Jurisprudence.
- (20) See generally chapter 3, section (i), post.
- (21) See generally Lloyd's Introduction to Jurisprudence, chapter 3.
- (22) cf. Language, Truth and Logic (Penguin Books, Harmondsworth), 1978, by A. J. Ayer. This work remains the locus classicus of logical positivism. Ethical positions of this kind tend to be "emotivist", that is, they regard moral discourse "as a mode of actual psychological expression and interaction between persons merely posing as, and by some naively taken as a system of reasoning". (G.J. Warnock, in The Object of Morality, (Methuen and Co. Ltd., London), at p.153. See also On Justice (Clarendon Press, Oxford), 1980, by J.R. Lucas, p.35, where that author discusses and quotes ad longam the celebrated passage from Alf Ross which discounts "justice" as a meaningless emotive propaganda term, and equates the invocation of justice with "banging ... the table".
- (23) cf. J.L. Mackie, Ethics, p.31

- (24) See also C.S. Lewis, in Mere Christianity (William Collins, Sons and Co. Ltd., Glasgow) 1977, p.15.
- (25) For an account of ethical relativism in the philosophy of Pyrrho, see Bertrand Russell, in History of Western Philosophy (Unwin Ltd., London), 1979, at p.243. Relativism is also discussed by Warnock in The Object of Morality at p. 2ff, and at p.6 he refers to "the Heraclitean flux and... all the diversities paraded by Hegel and the historians and anthropologists". Relativism is espoused by Leon Trotsky at p.21 of Their Morals and Ours, in the anthology of the same name, (Pathfinder Press, New York), 1979. The same position arises elsewhere in the same anthology, at p.75, in George Novack's essay Liberal Morality: The Controversy Between John Dewey and Leon Trotsky: "Theoreticians of morality confront two principal difficulties in arriving at a rational foundation or scientific explanation for standards of conduct". The first, he tells us, is the "extreme variability in the notions of right and wrong" from one historical form of society to another, whilst second is the same variability as between the moral outlooks of different classes within any given society. For an unsympathetic treatment of relativism, see C.S. Lewis, in Mere Christianity, at p.17; "I need only ask the reader to think what a totally different morality would mean. Think of a country where people were admired for running away in battle, or where a man felt proud of double-crossing all the people who had been kindest to him. You might as well try to imagine a country where two and two made five".
- (26) See for example Lloyd's The Idea of Law, at p.88
- (27) Such as that presented in Hans Kelsen's General Theory of Law and State.
- (28) This, in essence, is the position taken up by Jeremy Bentham. Cf. Lloyd's Introduction to Jurisprudence, pp. 155-159.
- (29) In Principia Ethica (Cambridge University Press), 1978.
- (30) Emphasis mine.
- (31) Cf. Principia Ethica, p.40.
- (32) Ibid, p.40.
- (33) If this were true, then it would seem irresistible that nothing would be definable unless in terms which were themselves ultimately indefinable.
- (34) Emphasis Moore's.
- (35) Principia Ethica, p.41
- (36) "Factual" here must of course be taken in the strict sense of referring exclusively to brute, not institutional, facts. The key to the understanding of this distinction is that an institutional fact is one which refers to a normative condition of things, in the grammatical form of a factual

proposition. Thus, for example, the fact that wood floats in water is a brute fact, whereas the fact that I am a bachelor can only be understood in the context of certain societal rules, and is therefore an institutional fact.

- (37) From A Treatise of Human Nature, which is reproduced in part in Lloyd's Introduction to Jurisprudence, at p. 32.
- (38) Ethics, at p.38.
- (39) This has been discussed, at p.6, supra. See also footnote (22).
- (40) See generally Ayer, Language, Truth and Logic, chapter 6.
- (41) See generally, Lloyd, Introduction to Jurisprudence, chapter 8.
- (42) See generally R.M. Hare, The Language of Morals, (Oxford University Press), 1952, chapter 9, "Good in Moral Contexts".
- (43) Quoted by Mackie in Ethics, p.24.
- (44) See Kelsen in The Pure Theory of Law, p.527 for an account of the limitations on the extension of this principle of subsumption to substantive positive legal norms.
- (45) Ethics, p.15.
- (46) Ibid., p.49. See also p.7, supra and footnote (25).
- (47) Ethics, p.49
- (48) See p.8, above.
- (49) In this context, Hegel's position on the inadequacy of purely abstract or formal reasoning (representative of the category of *Verstand*) becomes relevant. Cf. the translator's foreword to Philosophy of Right, p.VII. This theme shall be resumed in the section entitled "The Dialectical Methodology", at p.32, post.
- (50) An account of the theory of Plato concerning the "Forms" or "Ideas" laid up in Heaven like so many primary standards of weights and measures is given by Lloyd at p.74 of The Idea of Law.
- (51) Mackie, Ethics, p.23.
- (52) The distinction founded on here as between act and meaning is essentially Kelsenian. Reference may be had to General Theory of Law and State, p.395.
- (53) Ethics, p.133.
- (54) For an example of an elaborate argument which rests on the equivocation of the two senses of the word "law", prescriptive and descriptive, see Leon Trotsky, Their Morals and Ours, p.48;

"It (the 'liberating morality of the proletariat') deduces a rule for conduct from the laws of the development of society, thus primarily from the class struggle, the law of all laws". This theme is developed in chapter 4, section IV "The Ethics of Insurrection; Trotsky's Revolutionary Morality" at p. 167.

- (55) See Lloyd, The Idea of Law, at p.95; "Until the eighteenth century no clear line was drawn between the physical laws which dealt with propositions about the world, and which could be refuted by empirical evidence showing their non-applicability, and normative rules laying down standards of human conduct." See also D. M. Walker, The Scottish Legal System, fourth edition (W. Green & Son Ltd., Edinburgh), 1976, p.23. Additionally, for an account of this view, involving the belief that both types of law have the will of God as their indispensable basis, and that the sole distinction between the two senses of the word "law" consists in that men possess free will whilst inanimate objects do not, so that laws of the latter kind can be disobeyed while the former cannot, see Mere Christianity by C. S. Lewis, p.16. A general account of error of this type being generated and reinforced by means of different concepts being denoted by the same term is given by E. R. Emmet in Learning to Philosophise. At p.39, he discusses "kinds of bewitchment ... ways in which mistakes may be embedded in language".
- (56) For an account of Spencer's evolutionary ethic, and the place of "laws" in his conception of social development, see Lloyd, Introduction to Jurisprudence, p.336.
- (57) Cf. Mackie, Ethics, p.53.
- (58) On the category of idolatry, as the inversion of object over subject, see chapter 2, p.43, post.
- (59) The Bible, King James Edition, Revelation chapter 2, verse 2.
- (60) Such a groundnorm would act as a substantive principle of unity, just as in Kelsen's system, the formal groundnorm acts as a formal principle of systematic unity. Cf. Kelsen, General Theory of Law and State, p.399.
- (61) For one graphic account of the Roman church's record in suppressing all freedom of thought, see D. Hay Fleming LL.D., The Scottish Reformation (Scottish Reformation Society, Edinburgh), 1960. At p.17, for example, we read that until 1543 (i.e. the same year as George Wishart was martyred at St. Andrews), it was an offence for the lieges to possess copies of the Bible, and that it was a capital offence "to argue against, or impugn, the Pope's authority". See also The United Free Church of Scotland, (Allenson, London), 1934, by James Barr B.D. particularly the chapter (at p.9) entitled "Right of Private Judgement", and the account (at p.13) of Martin Luther's insistence upon the free accessibility of Scripture.
- (62) At p.14 of Hegel. A customary morality of this kind was, Singer tells us, attributed by Hegel to the Ancient Greeks.

- (63) Cf. Hegel by Charles Taylor (Cambridge University Press), 1977, p.32.
- (64) Cf. H. B. Acton, Kant's Moral Philosophy (Macmillan and Co. Ltd., London), 1970, at p.41;
 "according to the (Kantian) Principle of Autonomy, the moral law is both actively willed by every rational being and regarded by him as the law he should submit to."
 See also p. 63.
- (65) Cf. Acton, Kant's Moral Philosophy, p.16.
- (66) For an account of the Socratic position on critical reflection, see Singer, at p.15 of Hegel. Reference should also be had to Tom Campbell, in The Left and Rights, (Routledge and Kegan Paul, London), 1983, p.37;
 "Indeed to follow societal rules simply because they are societal rules, is, in effect, for the moral agent to abdicate his duty to make up his own mind on moral issues." Further, much the same spirit is reflected in the remarks attributed to Kant by E.R. Emmet, (at p.19 of Learning to Philosophise). According to Emmet, Kant would tell his first-year students that he proposed to teach them not philosophy, but how to philosophise, not what to think, but how to think.
- (67) Philosophy of Right, p.3.
- (68) Philosophy of Right, p.12. For a useful resumé of Hegel's other (extremely favourable) pronouncements on the Reformation, cf. Hegel by Peter Singer, pp.18-20. It must, incidentally, be acknowledged that so far as moral autonomy is concerned, the rise of Protestantism represents only a relative advance on Roman Catholicism; the total reliance upon Scripture and the insistence upon the rigid dichotomy of creator and creature (cf. C.S. Lewis, Mere Christianity, p.7) in effect means merely that for one external authority is substituted another. See also Karl Marx, Contribution to the Critique of Hegel's 'Philosophy of Right', at p.60 of Robert C. Tucker's The Marx-Engels Reader (W.W. Norton & Co., New York), 1978; "Luther, without question, overcame servitude through devotion but only by substituting servitude through conviction. He shattered the faith in authority by restoring the authority of faith. He transformed the priests into layman, by turning laymen into priests. He liberated man from external religiosity by making religiosity the innermost essence of man. He liberated the body from its chains because he fettered the heart with chains".
- (69) Philosophy of Right, p.3.
- (70) See chapter 5, p.169, post.
- (71) By way of contrast to Hegel's position, reference should be had to "Popper's argument that we can know of no meaning in history other than that invested in it by human beings"; Bryan Magee, in Popper (Collins, Glasgow), 1978, p.101.

- (72) Philosophy of Right, p.11
- (73) It should be recalled that the entymological root of this word is "pro testa" - for witness.
- (74) See also Singer, at p.5 of Hegel; "Orthodox religion is, in Hegel's eyes, a barrier to the goal of restoring man to a state of harmony, for it makes man subordinate his own powers of thought to an external authority".
- (75) See generally the preface to Philosophy of Right, for example the following pronouncements which are extracted from p.4;
 "But however lofty, however divine, the right of thoughts may be, it is perverted into wrong if it is only this (opining) which passes for thinking and if thinking knows itself to be free only when it diverges from what is universally recognised and valid and when it has discovered how to invent for itself some particular character."
 "At the present time, the idea that freedom of thought, and of mind generally, evinces itself only in divergance from, indeed in hostility to, what is publicly recognised, might seem to be most firmly rooted in connection with the state."
- (76) Philosophy of Right, p.3. It should be observed that an ethic not possessing this foundation stands in contradiction to the indispensable basis of social convention, whence all moral values spring.
- (77) Cf. Singer, in Hegel; "(Moral) Freedom, taken by itself, turns out to be too abstract and barren to serve as the basis for a society." (p.78) "Hegel sees the principle exemplified by Socrates as a revolutionary force against the Athenian State. Thus he judges the death sentence passed upon Socrates as unimpeachably correct: the Athenian people were condemning the deadliest foe of the customary morality on which their communal existence was based". (p.15).
- (78) Peter Singer, Hegel; It was this condition of things, which according to Hegel, characterised the Roman world, in which; "The joyous spontaneous free spirit of the Greek world has been broken" (p.16). In this connection, Singer also discusses (at p.17) "the helplessness that the individual who sees himself as a free being, must feel in the face of a domineering power he is unable to influence".
 This analysis is corroborated by Bertrand Russell in History of Western Philosophy; "Those who obstinately insisted upon finding rationality somewhere withdrew into themselves". (p.234)
 At p.242 he employs the phrase "philosophy of retreat" to describe the characteristically Roman philosophies of Stoicism and the rest.
- (79) Cf. Singer, Hegel, p.78; "We can then see that both customary harmony and abstract freedom of the individual are one-sided. They must be brought together, unified in a manner that preserves them, and avoids their different forms of one-sidedness".

(80) Cf. Singer, Hegel, p.80;

"if every human being is freely able to use his powers of reasoning to judge truth and goodness the world can only receive universal assent when it conforms with rational standards. Therefore all social institutions - including law, property, social morality, government, constitutions and so on - must be made to conform to general principles of reason. Only then will law, morality and government cease to be arbitrary rules and powers which free agents must be compelled to obey. Only then will human beings be free and yet fully reconciled with the world in which they live."

See also the work of the same title, by Charles Taylor, at p. 365.

(81) Cf. Singer, Hegel, p.22.

(82) Cf. Taylor, Hegel, p.366.

(83) Tom Campbell, in The Left and Rights, p.140.

(84) Ibid., p.140.

(85) Cf. Hegel, Philosophy of Right, p.20; "The basis of right is, in general, mind; its precise place and point of origin is the will. The will is free, so that freedom is both the substance of right and its goal, while the system of right is the realm of freedom made actual."

(86) Cf. the Sidgwick dictum referred to at p.12 supra.

(87) See also Hegel, at p.16 of Philosophy of Right; "Natural law, or law from the philosophical point of view, is distinct from positive law; but to pervert their difference into an opposition and a contradiction would be a gross misunderstanding."

(88) See generally chapter 4, section (iv), "Trotsky's Revolutionary Morality; the Ethics of Insurrection", at p.163.

(89) (Blackwell, Oxford), 1974.

(90) Cf. D.M. Walker, Principles of Scottish Private Law, (Clarendon Press, Oxford), 1975, at p.1030.

(91) For a clear example, see Leon Trotsky, Their Morals and Ours, from the anthology of the same name.

(92) See chapter 3, section (iii), at p.95, below.

(93) See G.E. Moore's *Principia Ethica*, p.9, and my discussion on this work, above.

(94) William Shakespeare, *MacBeth*, in The Complete Works of William Shakespeare, (Cambridge University Press), 1980, at p.865

(95) This is one of the major themes of chapter 2, and as such it shall be resumed in that context.

(96) It is for this reason that I cannot fully endorse T.D. Campbell's dictum that

"justice is backward-looking in that it considers only past performances, while utility is forward-looking because it is concerned primarily with future benefits." (The Left and Rights, p.127)

I would contend that in pursuit of the ideal system of societal norms, the ideal legislator is concerned with an ongoing social situation, which is therefore multi-dimensional, and as such is neither retrospective nor prospective. See J.R. Lucas at p.43 of On Justice, (Clarendon Press, Oxford), 1980, for a discussion of the "omni-personality" and "omni-temporality" of justice.

(97) At p.27, above.

(98) Cf. Kant's Moral Philosophy, by H.B. Acton, at p.61;
"Kant rather negligently groups together selfish concern for one's own happiness and sympathetic concern for the happiness of mankind."

(99) This general mode of reasoning is explained in detail in the section of this chapter which is entitled "The Dialectical Methodology", at p.32, post.

(100) On the categorical imperative, see generally Kant's Moral Philosophy, by H.B. Acton, p.16, and p.21 (where the primary formulation of this principle of action is given; "Act only on that maxim through which you can at the same time will that it should become a universal law.", and at p.35.

An outline is also given by Peter Singer in Hegel.

Cf. p.30;

"Pure practical reasoning independently of particular desires, could only embody the universal element in reasoning. It would therefore, Kant contends, take the form prescribed by the categorical imperative."

Singer also outlines Hegel's objections to the categorical imperative at p.32 and p.34.

Trotsky sharply diverges from Kant's system; his critique, as set out in Their Morals and Ours will be considered in chapter 4, at p.163.

(101) The Bible, Exodus chapter 20, v.13.

(102) Cf. D.M. Walker, at p.1030 of Principles of Scottish Private Law, Second Edition, Volume 2.

(103) (1916) S.C. 757.

(104) Consequentialist, as opposed to formal, mode of judicial reasoning are discussed at length by Neil MacCormick in Legal Reasoning and Legal Theory, (Clarendon Press, Oxford), 1978, in chapter VI, "Consequentialist Arguments" (p.129), and also at p.105. This procedure, in which one norm is selected in favour of another, is identified as "second-order justification" (p.100). First-order justification involves simple deductive derivation of a rule from a wider, more general principle which is presupposed and recognised as valid; this usage of "first and second order" in no way diverges from J.L. Mackie's. (cf. Ethics, p.16).

- (105) Cf. Hegel, in the Philosophy of Right, at p.12;
"form in its most concrete signification is reason as speculative knowing, and content is reason as the substantial essence of actuality, whether ethical or natural. The known identity of these two is the philosophical Idea."
- (106) An extremely useful account of the dialectic, as used by Socrates and Plato, is given by Johannes Hirschberger, in A Short History of Western Philosophy, (Lutterworth Press, Bath), 1976, p.20. See also Bertrand Russell, History of Western Philosophy, p.110.
- (107) George Orwell, Nineteen-eightyfour, (Penguin Books Ltd., Harmondsworth), 1954, p.27.
- (108) Cf. J. Stalin, Political Report of the Central (Party) Committee to the XVI Congress, quoted at p.666 of Lloyd's Introduction to Jurisprudence.
- (109) Cf. Hegel, by Peter Singer, at p.75;
"Validity is a matter of form, not content. To the logician the content is of no interest."
He continues;
"It follows from this separation of form from content that logic tells us nothing about the actual world. The forms of argument which logic describes would be exactly as they are if humans were immortal, or tortoises were furry."
On this page there also appears the form of the formal syllogism, consisting in major premiss, minor premiss, and conclusion.
See also Bertrand Russell, History of Western Philosophy, p.206, for a useful account of the Aristotelian roots of formal reasoning. At p.210 of the same work, Russell points out that one difficulty for the formal logician lies in accounting for where first (general) propositions come from.
In Legal Reasoning and Legal Theory, at p.265, Neil MacCormick makes the interesting suggestion that the inadequacy of formal logic and of formal justice are connected phenomena.
- (110) For the form of the dialectical syllogism, cf. Lloyd, Introduction to Jurisprudence, p.630. See also Johannes Hirschberger, A Short History of Western Philosophy, p.149.
- (111) Cf. the "Deontology v. Consequentialism", section above. The same procedure is set to work in the section on the socialist principle of justice in holdings, in chapter 4., below, at p.
- (112) See for example the section on Nozick, in chapter 3, at p.70, below.
- (113) See Johannes Hirschberger, in A Short History of Western Philosophy, at p.140;
"To encourage a breakthrough of transcendental thinking, Kant developed his theory of the four antimonies. He

advanced four pairs of contradictory propositions (thesis and antithesis): the world is spatially and temporally limited - or unlimited; every composite substance is infinitely divisible - or not; everything in the world happens necessarily - or freely; there is a necessary being on whom the world depends - or there is not. All four of these propositions were demonstrable on the old metaphysics. But because the propositions are contradictory, the old metaphysics itself became involved in contradictions. It's impossibility would therefore be apparent." See also Russell, History of Western Philosophy, p. 193.

- (114) On this concept of a determinate logical progression, see Peter Singer, Marx, at p.28; "The immediate task of revolutionary theory is to understand in what way the present situation is a stage in the dialectical progress to freedom."
- (115) See for example C.S. Lewis, Mere Christianity, pp.17-18, and p.23.
- (116) Cf. Capital, Volume One, at p.301 of the Marx-Engels Reader ed. Robert C. Tucker; "My (i.e. Marx's) dialectical method is not only different from the Hegelian, but is its direct opposite. To Hegel, the life-process of the human brain, i.e. the process of thinking, which, under the name of 'The Idea', he even transforms into an independent subject, is the demiurgos of the real world, and the real world is only the external phenomenal form of 'the Idea'. With me, on the contrary, the ideal is nothing else than the material world reflected by the human mind, and translated into forms of thought." Against this, c.f. Peter Singer, at p.72 of Hegel; "classifications ... presuppose an objective reality beyond the thoughts and sensations of individual minds." See also p.302 of Tucker's volume, where Marx states; "The mystification which dialectic suffers in Hegel's hands, by no means prevents him from being the first to present its general form of working in a comprehensive and conscious manner. With him it is standing on its head. It must be turned right side up again, if you would discover the rational kernel within the mystical shell."
- (117) Cf. Hegel, by Peter Singer, at p.76. See also Hirschberger, A Short History of Western Philosophy, pp.24 and 139. For a theological parallel, see Calvin by Francois Wendel (Wm. Collins Sons & Co, Ltd., London), 1965, at p.94; "In this book, ('Christianismi Restitutio') Servetus taught that the Word is the ideal reason, the primordial idea which comprehends and sums up the essences of all things."
- (118) For a less than sympathetic treatment of this subject, see Bertrand Russell, Unpopular Essays (George Allen & Unwin Ltd., London), 1976, p.20.
- (119) Cf. Lloyd, Introduction to Jurisprudence, p.630.
- (120) Cf. Marx, by Peter Singer, at p.35; here Singer describes the ongoing dialectic as between the economic structure of society (the sum of the relations of production - the real

foundation) and the existing forces of production, this being the process which is fundamental to Marx's theory. See also pp. 65 and 84, and p.302 of the Marx-Engels Reader (Capital, Volume One); Marx discusses "The contradictions inherent in the movement of capitalist society."

- (121) Cf. Engels (Fontana/Collins, Glasgow), 1977, by David McLellan, pp.56-64, and by Friedrich Engels himself, Socialism: Utopian and Scientific, at pp.696-697 of the Marx-Engels Reader. Engels' influence is in evidence in Trotsky's Their Morals and Ours, at p.26.
- (122) Cf. Engels, Socialism: Utopian and Scientific, at p.697.
- (123) Cf. David Lyons, Forms and Limits of Utilitarianism, (Oxford University Press), 1965, pp.119-120, where the author distinguishes "primitive rule-utilitarianism", which "is simply utilitarianism applied in a certain way" from "ideal rule-utilitarianism"; of the latter category, he records that "on such a theory the rightness or wrongness of acts is not dependent upon some utilitarian characteristic of acts themselves (such as their simple or generalised utilities), but is rather dependent upon some utilitarian characteristic of the set of rules under which the acts fall." The reconciliation of deontology and consequentialism in this context is reflected by Tom Campbell, at p.125 of The Left and Rights; "but when the utilitarian criterion is applied, as it can be, to the choice of material rights, the conflict between right and utility is neither inevitable nor incorrigible."
- (124) See chapter 5, p. 183, post.
- (125) Contrary to the contention of dialectical materialism that the Idea possesses no other ontological foundation than subjective consciousness, (cf. the passage from the Marx - Engels Reader which is quoted in footnote (116)), the Idea as a fixed logical category, an extramental entity, which precedes and is presupposed by thought and consciousness is the essential and indispensable precondition for thought taking place at all. The "Idea" is further explained in the translator's foreword to Hegel's Philosophy of Right, where it is identified as the self-determined concept, distinct from the "idea", which is a category of merely formal logic. (p.IX). In the same work, Hegel himself describes the Idea as being "the rational factor in any object of study." (p.14) At p.10, Hegel identifies the central role of the Idea in philosophy by describing philosophy as "the exploration of the rational" and then continuing to state that "rationality (which is synonymous with the Idea) enters upon external existence simultaneously with its actualisation." See also Singer, Hegel, at p.72.
- (126) Cf. Lloyd, Introduction to Jurisprudence, p.155. This dualism is inseparable from the spirit of law reform.
- (127) Cf. Charles Taylor, Hegel, pp.111-112.

- (128) For an example of the attempted derivation of concrete information concerning the real world from the "speculative conception", cf. Engels, The Origin of the Family, Private Property and the State in Tucker's The Marx-Engels Reader, p.757. See also J. Bronowski, in The Ascent of Man (BBC, London), 1973.
- (129) Cf. Hegel, Philosophy of Right, p.11; "It is just as absurd to fancy that a philosophy can transcend its contemporary world as it is to fancy that an individual can overleap his own age, jump over Rhodes." cf. p.21 supra.
- (130) Cf. chapter 3, s(ii), "Professor Nozick and the Principle of Natural Liberty", at p.70, post.
- (131) Cf. Campbell, The Left and Rights, at p.91, in connection with Pashukanis.
- (132) Particularly unsatisfactory in this respect is the doctrine of original acquisition; cf. Robert Nozick, Anarchy, State and Utopia, p.150, and chapter 3, section (ii), at p.90, post.
- (133) Ziyad I. Husami, Marx on Distributive Justice, in Philosophy and Public Affairs, 1976, 8, 1, at p.32.
- (134) Cf. Joseph McCabe, The Social Record of Christianity, (Watts & Co., London), 1935, at p.89.
- (135) Cf. D.M. Walker, The Scottish Legal System, at p.169.
- (136) McCabe, The Social Record of Christianity, p.55.
- (137) Cf. the Land Tenure Reform (Sc) Act, 1974, ss1, & 4-6.
- (138) Karl Marx, Inaugural Address of the Working Men's International Association, at p.518 of the Marx-Engels Reader.
- (139) On development as the movement from the implicit, an sich, potentia, to the explicit, fur sich actus, cf. the translator's introduction to Hegel's Philosophy of Right, p.ix. On development as a historicological process, cf. P.J. Proudhon, quoted by Marx in The Poverty of Philosophy, at p.207 of David McLellan's Karl Marx: Selected Writings, (Oxford University Press), 1977; "a hypothesis ... a veritable antimony whose antagonistic results develop in the social economy in the same way as its consequences could have been deduced in the mind".
- (140) "Objectivity", here, of course, refers merely to independence from the particular subjective mind, and is not to be confused with the objectivist thesis outlined earlier. As such, it is by no means incompatible with the notion of morality being founded upon intersubjective agreement.

Footnotes to Chapter 2.

- (1) Herbert Marcuse, at p.102 of Reason and Revolution, (Routledge and Kegan Paul, London), 1954.
 - (2) At p.10, supra.
 - (3) The classic formulation of the idealist conception of creation would appear to be located in the philosophy of Plotinus. Cf. Bertrand Russell, History of Western Philosophy (Unwin Ltd., London), 1979, p.297.
 - (4) See generally Hegel (Cambridge University Press), 1977, by Charles Taylor, chapter 3, "Self-positing Spirit", at p. 51. See also Hegel, (Oxford University Press), 1984, by Peter Singer, at pp.70 and 72-3.
 - (5) This position is diametrically opposed to the belief in divine providence. For an instance of this see John Calvin, as quoted at p.178 of Calvin by Francois Wendel (Collins/Fontana, Glasgow), 1965;
"And ... he (God) not only drives the machinery of the world and all its parts in a universal motion, but sustains, nourishes and cares for every creature, even for the little birds."
 - (6) Cf. Hans Kelsen, The Pure Theory of Law, in The Law Quarterly Review, vol 50, October, 1934, at p.476 for an illumination of these terms.
 - (7) Cf. p.325 of Bertrand Russell's History of Western Philosophy.
 - (8) Cf. Corrado Pallenberg, Vatican Finances (Penguin Books Ltd., Harmondsworth), 1973, p.55.
 - (9) (Robert Hale Ltd., London), 1958, by George A. Kelly.
 - (10) Pius XI's Encyclical on Christian Marriage of 1930, reproduced at p. of The Catholic Marriage Manual. In this respect, Calvinism marked a significant advance; John Calvin is quoted in the following terms, by Wendel at p.194 of Calvin; "Did not certain pagans themselves acknowledge that philosophy, the laws and medicine were so many gifts from heaven? A Christian has yet greater reason to think so."
 - (11) From Grundrisse, at p.363 of David McLellan's Karl Marx: Selected Writings (Oxford University Press), 1977.
 - (12) Ibid, p.363. Similarly, for Marcuse, "The reality of happiness is the reality of freedom as the self-determination of liberated humanity in its common struggle with nature."
(Herbert Marcuse, at p.199 of Negations, (Allen Lane/Penguin Press, London), 1968.
-
- (13) Cf. H.B. Acton, Kant's Moral Philosophy (Macmillan, London) 1970, at p.16.
 - (14) Ibid., p.21, for a discussion of "subjective principle(s) of action". The transition from impulse, or passion, to

prudence, foresight, subjective instrumental rationality is more fully discussed at p.35 of Bertrand Russell's History of Western Philosophy. Impulse proves to be an inadequate, i.e. self-contradictory form of will in part because it entails subjugation of the agent to his various biologically and socially conditioned affinities and aversions; it follows that freedom is to be found, if at all, only in man's capacity for reasoned judgement.

- (15) (Methuen and Co. Ltd., London), 1971.
- (16) Cf. the foreward, at p.IX, and p.15.
- (17) The Object of Morality, p.16.
- (18) Ibid., pp.21, 22 & 26.
- (19) (Clarendon Press, Oxford), 1980.
- (20) Cf. On Justice, p.46.
- (21) American Philosophical Quarterly, 14 (1977); p.321.
- (22) Philosophy and Public Affairs, 8,3, (1979); p.235.
- (23) (Penguin Books Ltd., Harmondsworth), 1981.
- (24) At p.115.
- (25) At p.49 of On Justice. Reference might also be had to the following passage, which appears at p.52 of the same work; "The Prisoners' Dilemma is a paradigm because it reveals the conflict between short-term interest and long-term interest, and reveals an incoherence in the attempt to limit rationality to a simple principle of maximising one's own immediate interests." See also p.57.
- (26) At p.4 of Theory of Games as a Tool for the Moral Philosopher (Cambridge University Press), 1955.
- (27) Cf. Peter Singer, at pp.69-70 of Marx (Oxford University Press), 1980, for an interesting example involving road traffic, and a discussion of the paradox that, in the model, "we have each chosen in our own interests, but the result is in no-one's interest. Individual rationality, collective irrationality."
- (28) In Hegel, p.42.
- (29) Cf. On Justice, p.51.
- (30) Ethics, p.116.
- (31) Lucas, On Justice, p.37.
- (32) (Fontana/Collins, London), 1962. First published in 1651.
- (33) Leviathan, p.143.

- (34) "In such condition, there is no place for industry; because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing, such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short." (Leviathan, p.143).
- (35) Cf. Chapter 5, at p.171, post.
- (36) Cf. p.55 of Utilitarianism, in Utilitarianism, Liberty and Representative Government, (J.M. Dent & Sons Ltd., London), 1910.
- (37) At The Wealth of Nations, Book V Ch.1, quoted at p.209 of Stein and Snaad, Legal Values in Western Society, (Edinburgh University Press), 1974.
- (38) A pay-off matrix for two "players" in the state of nature is set out by J.R. Lucas at p.54 of On Justice.
- (39) The Bible, King James Edition, Luke Ch.XII, v.24.
- (40) G.W.F. Hegel, Philosophy of Right, (Oxford: University Press), 1979, p.28.
- (41) Hobbes, Leviathan, p.174.
- (42) Cf. Warnock, The Object of Morality, at p.22; "it may be necessary for us individuals to do things, for instance in self-protection, the doing of which may be exceedingly laborious, wasteful, and disagreeable. It will be obvious that all this applies as fully to relations between groups as between individuals; and indeed that distrust and active hostility between groups has been, in the human predicament, as frequent and constant as between individuals, and vastly more damaging."
- (43) Leviathan, p.143.
- (44) Leviathan, p.145. See also p.13 of the introduction by John Plamenatz, in which there is described the movement in which men "come to conceive of certain rules of conduct and to desire their general observance." See also John Stuart Mill, at p.55 of Utilitarianism; "The moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs. They also have the peculiarity that they are the main element in determining the whole of the social feelings of mankind. It is their observance which alone preserves peace among human beings: if obedience to them were not the rule, and disobedience the exception, every one would see in every one else an enemy, against whom he must be perpetually guarding himself."

- (45) Cf. Ch. 3, post.
- (46) Whether or not this is an essential attribute will be discussed in chapter 4, at p.151, post.
- (47) Cf. Lucas, at p.39 of On Justice; "Justice ... is not the whole of virtue ... but is a necessary virtue none the less, and one I must practice if I am to live with others in society."
- (48) At p.55 of On Justice. The use of the term "agreement" requires some explanation; in this context, it merely signifies "consensus" For reasons of simplification, Lucas represents social convention as arising out of an express agreement, in the time-honoured tradition of social contract theory.
- (49) At p.52 of On Justice.
- (50) At p.56 of On Justice.
- (51) At p.56 of On Justice.
- (52) See also Peter Singer, at p.72 of Marx, in connection with Singer's analogy of the commuters, discussed in footnote (27), above.
- (53) A fuller examination of this relationship shall be attempted in chapter 4, post. Cf. p.152.
- (54) For an account of Aristotle's metaphysics, cf. Russell, History of Western Philosophy, p.173.
- (55) Cf. Lloyd, Introduction to Jurisprudence, pp.631 & 632.
- (56) In this connection, however, one might well doubt the socialist claim that proletarian class solidarity would provide the foundation for an enduring social cohesion in post-revolutionary society, from which the alleged common enemy, the capitalist, has vanished.
- (57) See for example Numbers Ch. 33, verses 50-53 on the destruction of the Canaanites. See also Deuteronomy Ch.2, v.33; "And the Lord our God delivered him before us; and we smote him, and his sons, and all his people."
- (58) See generally Andrew Boyd, Holy War in Belfast, (Anvil, Dublin), 1969.
- (59) Cf. Engels, The Origin of the Family, Private Property and the State, in The Marx-Engels Reader, at p.734. Further reference may be had to a review of Engels' pronouncements on this matter at p.38 of Hans Kelsen's The Communist Theory of Law (Stevens and Sons, London), 1955. The former of these sources contains the highly enthusiastic response of Engels and Marx to Lewis H-Morgan's "account of a stateless primitive society founded on communal property". (p.734).
- (60) Cf. Russell, History of Western Philosophy, p.662.

- (61) General reference may be had to the Journals of the Stair Society, volumes 27 & 28; Justiciary Cases 1624-50, volumes 2 & 3.
- (62) This is discussed more fully in Chapter 4, in the section entitled The Withering Away of Law and State, at p.147, post.
- (63) A fuller discussion of this concept is given in chapter 4, at p.147.
- (64) Cf. Exodus, 21, v.24, and 25; "Eye for eye, toothe for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."
- (65) Cf. Numbers, 35, v.19; "The revenger of blood himself shall slay the murderer: when he meeteth him, he shall slay him."
- (66) Cf. Deuteronomy, 6, v 1-3, also 11, v 1 and 28, v 1.
- (67) Cf. Leviticus 20, v 13. In this connection, it may be remarked that it is quite deplorable how such taboo conceptions contrive to endure even into modern times; even a man of George Orwell's indubitable enlightenment would appear to have considered homosexuality a crime on a par with murder: cf. The Road to Wigan Pier, (Penguin, Harmondsworth) 1962, p.112. On witchcraft see Exodus 22, v 18, and Leviticus 20, v 27.
- (68) Cf. Lloyd, The Idea of Law, p.81; "The Reformation in countries under Calvinist influence saw an attempt to re-create the theocracy of the Old Testament, under which the priests directly interpreted God's will for the governance of mankind." Reference may also be had to p.51 of the same work. By way of contrast, humanist pronouncements appear at p.152 of Bertrand Russell's Best (George Allen & Unwin Ltd., London), 1975.
- (69) The Aeneid, (Penguin, Harmondsworth), 1956, p.32. Translation by W.F. Jackson Knight.
- (70) The failure to establish a stable succession in the Roman Empire would appear to have been one of the chief causes of its demise. Cf. Russell, History of Western Philosophy, p.280
- (71) From the Manifesto of the Communist Party by Karl Marx and Friedrich Engels, at p.475 of the Marx-Engels Reader.
- (72) Cf. Hobbes, Leviathan, p.211. See also Russell, History of Western Philosophy, p.539.
- (73) Plato, The Republic, p.359.
- (74) Much the same might be said in connection with slavery; McCabe records that Pope Gregory "the Great" was the richest slave-owner in the Europe of his day, while St. Augustine defended slavery as a just punishment for original sin; cf. Social Record of Christianity, (Watts and Co., London), 1935 at p.27.

- (75) Cf. The Social Record of Christianity, p.52.
- (76) At p.25 of the translator's introduction to Plato's The Republic.
- (77) See generally chapter 1, p.21 supra.
- (78) Cf. p.35 of Hegel by Peter Singer.
- (79) Philosophy of Right, p.17.
- (80) This practice arose within the context of the need to effect the suppression of blood-feuds. Similarly, sons were formerly tainted with the father's guilt for treason. Cf. Justinian's Code, (University of Zurich), 1974, 9,8,5.
- (81) Hegel, Philosophy of Right, p.17.
- (82) Capital, vol.1, at p.433 of Tucker's Marx-Engels Reader. See generally pp.431-7.
- (83) Philosophy of Right, p.189.
- (84) Contribution to the Critique of Hegel's Philosophy of Right, at p.16 of the Marx-Engels Reader.
- (85) Cf. Russell's History of Western Philosophy, at p.129.
- (86) Ibid, p.201.
- (87) Philosophy of Right, p.279.
- (88) Cf. Bertrand Russell's History of Western Philosophy, at p.684.
- (89) See generally J.R. Lucas, On Justice, chapter 15, Justice between States, p.253. See also Hegel, by Charles Taylor, at p.449. Hegel himself asserts, at p.212 of Philosophy of Right, "The nation state is mind in its substantive rationality and is therefore the absolute power on earth."
- (90) History of Western Philosophy, p.711.
- (91) Philosophy of Right, p.67.
- (92) Leviathan, p.23.
- (93) Leviathan, p.174.
- (94) This tendency becomes ever more pronounced as a result of the demands occasioned by the "economies of scale" for control of larger and larger markets. Cf. Russell, In Praise of Idleness, (George Allen & Unwin Ltd., London), 1976, at p.97.
- (95) Quoted at p.151 of The World in the Twentieth Century, (Van Nostrand Inc., New York), 1964, by Louis L. Snyder.
- (96) Snyder, The World in the Twentieth Century, p.151.

- (97) The (unsuccessful) attempt to establish a League of Nations was in fact anticipated by Kant. Cf. p.213 of Hegel's Philosophy of Right.
- (98) Cf. Marx, On the Jewish Question, at p.42 of Tucker's The Marx-Engels Reader.

Footnotes to Chapter 3.

- (1) F.A. Hayek, Law, Legislation and Liberty (Routledge & Kegan Paul, London), 1982, volume 2, p.70.
- (2) (Blackwell, Oxford), 1974.
- (3) (RKP, London), 1982.
- (4) G.W.F. Hegel, at p.17 of Philosophy of Right (Oxford University Press), 1967.
- (5) p. 206. All references in the present section are to Anarchy, State and Utopia, except where indicated.
- (6) Viz. Peter Stein and John Shand, Legal Values in Western Society (Edinburgh University Press), 1974, at p.223.
- (7) p. 150.
- (8) p. 134.
- (9) It is probable that Campbell had Nozick in mind, when he wrote of those theories which combine "a natural law position on the right to liberty and a contractarian position on obligations which diminish liberty by establishing correlative positive rights." cf. The Left and Rights (Routledge & Kegan Paul, London), 1983, at p.86.
- (10) p.150.
- (11) Cf. Thomas Hobbes, Leviathan, (Fontana/Collins, London), 1962, p.177.
- (12) Jean-Jacques Rousseau, Du Contrat Social, (Union Generale D'Editions, Paris), 1973, at p.74. "Chacun de nous met en commun sa personne et tout sa puissance sous la supreme direction de la volonte generale."
- (13) p..89.
- (14) This is contrasted with "demoktesis" at p.290.
- (15) Cf. Joseph McCabe, The Social Record of Christianity (Watts & Co., London), 1935, at p.22.
- (16) p..282.
- (17) Cf. H.B. Acton, Kant's Moral Philosophy (Macmillan & Co., London), 1970, at p.35.

- (18) p.289.
- (19) Cf. chapter 1 of the present essay, at p.26, supra.
- (20) (Cambridge University Press), 1978.
- (21) Cf. H.B. Acton, Kant's Moral Philosophy, at p.23.
- (22) Quoted by Nozick at p.288.
- (23) p.28-9.
- (24) Italian Law of Guarantees, 1871, article 5. Quoted by Corrado Pallenberg, at p.61 of Vatican Finances (Penguin, Harmondsworth), 1973.
- (25) Cf. Hegel (Cambridge University Press), 1977, by Charles Taylor, pp.244-257.
- (26) p.6.
- (27) At p.100.
- (28) p.133.
- (29) p.34.
- (30) p.171.
- (31) Found, quoted by Stein and Shand at p.244 of Legal Values in Western Society.
- (32) Cf. p.204 of General Theory of Law and State, "The legal order delegates to individuals the regulation by contracts of their economic relationships."
- (33) Cf. the footnote to p.55.
- (34) p.26.
- (35) P.6, pp.51-52.
- (36) At p.153 Unpopular Essays (Unwin Books, London), 1968.
- (37) p.10.
- (38) p.13.
- (39) pp.12-15.
- (40) E.g. at p.17.
- (41) pp.108-110.
- (42) pp.96-110.
- (43) Cf. p.118. The minimal state does not claim to possess any rights uniquely.

- (44) Cf. p.290.
- (45) p.7.
- (46) p.16.
- (47) Karl Marx and Friedrich Engels, Manifesto of the Communist Party, at p.493 of Robert C. Tucker's The Marx-Engels Reader (W.W. Norton & Co., New York), 2nd ed., 1978.
- (48) This incompatibility as between formal entitlements and distributive patterns, it should be noticed, is precisely what certain persons at the other end of the political spectrum have in mind in rejecting the former in favour of the latter. Cf. Campbell, at p.54 of the Left and Rights.
- (49) p.332.
- (50) p.312.
- (51) Kant, from What is Entitlement?; quoted at p.42 of Kant's Moral Philosophy by H.B. Acton. It must be admitted that this passage would have been all the more appropriate had the final word read "themselves".
- (52) pp.204-213.
- (53) p.151.
- (54) p.145.
- (55) Manifesto of the Communist Party, at p.475 of Tucker's Marx-Engels Reader.
- (56) p.262.
- (57) Discussed further in chapter 4 of the present essay, at pp. 110-116.
- (58) p.253.
- (59) p.187.
- (60) p.249.
- (61) p.217.
- (62) See generally Barry Pinson, at p.193 of Pinson on Revenue Law (16th ed.), (Sweet & Maxwell, London), 1985. "Earned income" is defined by s. 530 of the Income and Corporation Taxes Act 1970, whilst "investment income" is defined by s.32 (3) of the Finance Act 1971 as being any income other than earned income.
- (63) p.185. In the words of Rawls, "No one deserves his greater natural capacity nor merits a more favorable starting place in society Thus we are led to the difference principle if we wish to set up the social system so that no one gains

or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return." A Theory of Justice, (Oxford University Press), 1973.

- (64) p.226.
- (65) p.228.
- (66) p.283.
- (67) p.271.
- (68) At p.223.
- (69) p.163.
- (70) Manifesto of the Communist Party, at. p.486 of Tucker's Marx-Engels Reader.
- (71) p.150.
- (72) p.149.
- (73) Discussed by J.R. Lucas at pp.235-241 of On Justice (Clarendon Press, Oxford), 1980.
- (74) Of whom a fuller discussion is given in chapter 5, infra.
cf. p.173
- (75) p.192.
- (76) pp.153.
- (77) p.169.
- (78) p.328.
- (79) p.172.
- (80) p.163.
- (81) p.238.
- (82) p.248.
- (83) p.251.
- (84) In The Left and Rights, at p.185.
- (85) p.141 of Peter Donaldson's Guide to the British Economy (Penguin, Harmondsworth), 1976. (Fourth edition).
- (86) p.100.
- (87) Nozick discusses the question of the state possessing the right to force individuals to participate in a judicial system at p.283.

- (88) Cf. p.283.
- (89) For a definition of this term, cf. Campbell, in The Left and Rights, at p.169, in which that author takes it to include "any process whereby communal decisions are reached over matters of common concern."
- (90) p.270.
- (91) Cf. Engels, in The Origin of the Family Private Property and the State, at p.754 of the Marx-Engels Reader; "In most of the historical states, the rights of the citizens are, besides, apportioned according to their wealth, thus directly expressing the fact that the state is an organisation of the possessing class for its protection against the non-possessing class."
- (92) Cf. D.M. Walker's Principles of Scottish Private Law, (2nd ed,) (Clarendon Press, Oxford), 1975, at p.1204.
- (93) The Times Law Report, November 11th, 1981, p.14.
- (94) Ibid, p.14.
- (95) See generally the discussion given to this topic in chapter 1, *supra*, at p.5.
- (96) p.169.
- (97) Footnote to p.30.
- (98) Cited by Stein and Shand at p.211 of Legal Values in Western Society.
- (99) Ibid, p.211.
- (100) Thus the landlord's actions may be subsumed within the category of damnum sine iniuria, discussed earlier, at p.27.
- (101) p.9. See also p.XIV.
- (102) p.33.
- (103) In this respect, Nozick comes close to Rousseau's celebrated dictum, "Man is born free, but everywhere he is in chains." Quoted at p.669 of Bertrand Russell's History of Western Philosophy (Unwin Ltd., London), 1979.
- (104) Thomas Hobbes, at p.145 of Leviathan.
- (105) Cf. chapter 2, at p.53, *supra*.
- (106) Marx, in the preface to Contribution of Political Economy, at p.656 of Lloyd's Introduction to Jurisprudence (Stevens, London), 1972 (3rd ed.), where it is reproduced.
- (107) Hobbes, Leviathan, p.145.

- (108) Hobbes, Leviathan, p.175.
- (109) At p.59, *supra*.
- (110) Leviathan, pp.47, 53.
- (111) At pp.26-31, *supra*.
- (112) On the incoherence of the concept of pre-social rights, c.f. Tom Campbell, at p. 106 of The Left and Rights. See also p.179, where Campbell demonstrates that certain fundamental rights actually presuppose political organisation; "traditional civil rights are ... unrealisable through the unco-ordinated efforts of individuals. Any number of unco-ordinated individuals cannot provide others with a fair trial."
- (113) Cf. Max Kaser, Roman Private Law (University of South Africa), 1980, sections 81, 82, 85, & 87. See also J.M. Kelly, Roman Litigation, (Clarendon Press, Oxford), 1966, at pp.2-3.
- (114) p.330.
- (115) p.178.
- (116) "Nemo dat quod non habet".
- (117) Cf. D.M. Walker's Principles of Scottish Private Law, at p.1274.
- (118) Capital, vol.1, at p.431 of The Marx-Engels Reader. Reference may also be had to the following dictum; "In actual history it is notorious that conquest, enslavement, robbery, murder, briefly force play the great part ... As a matter of fact, the methods of primitive accumulation are anything but idyllic" (p.432) and; "If money, according to Augier, 'comes into the world with a congenital blood-stain on one cheek', capital comes dripping from head to foot, from every pore, with blood and dirt." (p.435)
- (119) Footnote to p.187.
- (120) J.L. Mackie, Ethics -Inventing Right and Wrong (Penguin, Harmondsworth), 1977, at p.174.
- (121) p.160.
- (122) Cf. Ethics, at p.175.
- (123) Ethics, p.175.
- (124) Cf. Thomas Robert Malthus, at p.67 of An Essay on the Principle of Population, (Penguin, Harmondsworth), 1982.
- (125) Cf. p.10. Emphasis mine.
- (126) Cf. Bertrand Russell, at p.193 of History of Western Philosophy, in connection with the first two of the three questions which he says we can ask of any philosopher.

- (127) p.59.
- (128) Legal Values in Western Society, by Stein and Shand, at p.244.
- (129) p.145.
- (130) Legal Values in Western Society, at p.243.
- (131) pp.18-22.
- (132) Cf. Manifesto of the Communist Party, at p.487 of The Marx-Engels Reader.
- (133) Such evaluation would of course take place in accordance with the criteria set out at p.57 of chapter 2, supra.
- (134) Cf. Manifesto of the Communist Party, at p.487 of the Marx-Engels Reader; "historical relations which rise and disappear in the progress of production."
- (135) p.238.
- (136) pp.167-8.
- (137) p.289.
- (138) p.333.
- (139) New Statesman, 13/4/79.
- (140) A discussion of collective goods is given at p.6 of Hayek's Law, Legislation and Liberty, volume 2. All further page references in this chapter are to this work, unless a contrary indication is given.
- (141) p.7.
- (142) In Ethics - Inventing Right and Wrong, at p.178.
- (143) p.31; "Justice is an attribute of human conduct".
- (144) p.32.
- (145) p.6.
- (146) p.38.
- (147) p.36.
- (148) p.15.
- (149) p.7. This distinction between purpose and function largely corresponds to the distinction between the consequences of actions and the consequences of rules which was drawn in chapter 1, in the section entitled "Deontology versus Consequentialism", at p.26.
- (150) As we have seen, for Marx the former side alone exists.

- (151) p.90.
- (152) Cf. On the Jewish Question, at p.42 of The Marx-Engels Reader.
- (153) p.71.
- (154) p.107.
- (155) p.8.
- (156) p.107.
- (157) p.136.
- (158) Cf. Nozick Anarchy, State and Utopia, pp.18-22.
- (159) Cf. Manifesto of the Communist Party, at p.487 of The Marx-Engels Reader.
- (160) Ibid. See also footnote (134).
- (161) Cf. chapter 2, p.41, supra. See also Marx, in Capital, Volume Three, at p.441 of The Marx-Engels Reader.
- (162) Cf. chapter 2, p.44, supra.
- (163) For an interesting example of how spontaneous interaction, even within rules of conduct, can generate an outcome intended by no-one, see Peter Singer, at pp.69-70 of Marx (Oxford University Press), 1980.
- (164) Bertrand Russell, at p.95 of In Praise of Idleness (Unwin, London), 1976.
- (165) Bertrand Russell, at p.88 of Bertrand Russell's Best (Unwin, London), 1975.
- (166) Cf. Peter Donaldson, at pp.63-65 of Economics of the Real World, (Penguin, Harmondsworth), 1973, where a concise account of this phenomenon is given. See also Marx, in Capital, Volume Three, at p.505 of Karl Marx: Selected Writings, ed. David McLellan (Oxford University Press), 1977; "industrial and commercial cycles, alternations of property and crisis, appear to them as overwhelming natural laws that irresistably enforce their will over them, and confront them as blind necessity." See also Engels, in The Origin of the Family, Private Property and the State, at p.756 of The Marx-Engels Reader. The related phenomena of cyclical unemployment is discussed by Donaldson at p.161-170 of Guide to the British Economy (Penguin, Harmondsworth), 1976. Further reference may be had to p.71 of Marx by Peter Singer, and to David McLellan at p.67 of Engels (Collins, London), 1977.
- (167) Cf. p.34 of Economics of the Real World by Peter Donaldson.
- (168) Ibid., pp.44-5.
- (169) Cf. Peter Donaldson, Guide to the British Economy, at pp.166-70.

- (170) Capital, Volume One, at p.438 of The Marx-Engels Reader. See also p.302.
- (171) Cf. Engels, in The Origin of the Family, Private Property and the State, at p.756 of The Marx-Engels Reader. See also Peter Donaldson, at p.46 of Economics of the Real World.
- (172) Engels, in The Origin of the Family, Private Property and the State, at p.756 of The Marx-Engels Reader.
- (173) See also Campbell, at p.29 of The Left and Rights.
- (174) Cf. Bryan Magee, at p.80 of Popper, (Collins, Glasgow), 1978.
- (175) p.71.
- (176) p.7.
- (177) Cf. Marx, by Peter Singer, at p.69; liberals conceive of "capitalism as the outcome of the free choices of millions of individuals; which goes some way to explaining why democracy is superfluous to Nozick's theory.
- (178) p.30.
- (179) "Freedom in this field can only consist in socialised man, the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature"; Marx, Capital, Volume Three, at p.441 of The Marx-Engels Reader. Compare this dictum with the following passage from Marx by Peter Singer, p.71; "Economic relations appear to us as blind natural forces ... Yet these economic relations are our own unwitting creations, not deliberately chosen but nevertheless the outcome of our individual choices and thus potentially subject to our will. We are not truly free until, instead of letting our creations control us, we collectively take control of them. Hence the significance of a planned economy. In an unplanned economy human beings unwittingly grant the market control over their lives; planning the economy is a reassertion of human sovereignty and an essential step towards true human freedom."
- (180) Cf. chapter 2, *supra*, at p.67.
- (181) Cf. Engels, in The Origin of the Family, Private Property and State, at p.743 of The Marx-Engels Reader; "The labour contract is supposed to be voluntarily entered into by both parties. But it is taken to be voluntarily entered into as soon as the law has put both parties on an equal footing on paper. The power given to one party by its different class position, the pressure it exercises on the other - the real economic position of both - all this is no concern of the law".
- (182) "Under the guise of civil relations between equals, those in control of the means of production exercise their power over the others. This view is attributed to Pashukanis, by Friedman, quoted at p.636 of Lloyd's Introduction to Jurisprudence.

- (183) Manifesto of the Communist Party, at p.487 of The Marx-Engels Reader.
- (184) Engels, in The Origin of Family, Private Property, and State, at p.744 of The Marx-Engels Reader.
- (185) Cf. Andrew Boyd, in Holy War in Belfast (Anvil, Dublin), 1969, at p.161.
- (186) Engels, in The Origin of Family, Private Property and State, at p.743 of The Marx-Engels Reader.
- (187) Ibid, p.744.
- (188) Ibid, p.743.
- (189) By Boyd, at p.49 of Holy War in Belfast.
- (190) Ibid, p.18.
- (191) In The Social Record of Christianity, at p.92.
- (192) This movement coincided with the repeal of the laws regulating wages and working conditions.
- (193) See however Marx, on laws for the shortening of the working day, "to prevent the coining of children's blood into capital", in Capital, Volume One, at p.376 of The Marx-Engels Reader.
- (194) At p.13 of Lenin and the Downfall of Tsarist Russia (Methuen & Co., Ltd., London), 1966.
- (195) Arguing from the analogy of his vindication of the dominant protective agency's de facto monopoly, at p.109 of Anarchy, State and Utopia, there is on Nozick's principles nothing illegitimate about this transformation.
- (196) Cf. Denis Lloyd's The Idea of Law (Penguin, Harmondsworth), 1964. It must at the same time be admitted that a lack of resources confers upon the "man of straw" a certain immunity from civil action.
- (197) Cf. J.F. Garner's Administrative Law, (5th edition) (Butterworth, London), 1979, at p.126; "Nemo debet esse iudex in propria causa" - no-one should be judge in his own cause. See also The British Constitution, (3rd edition) (Macmillan, Glasgow), 1963, by Harvey and Bather, at p.393.
- (198) This, in essence, is the thesis advanced by J.A.G. Griffiths in The Politics of the Judiciary, (Collins, Glasgow), 1977.
- (199) The rise of the bourgeoisie to political predominance in civil society, as depicted by Marx, is closely paralleled and indeed predated by Plato's analysis of "oligarchy", the acquisitive society in which political power follows private wealth and vested interest. Most clearly reminiscent of Marx, Plato propounded that such a condition of things was bound to result in increasing exploitation of the poor by the rich, with a consequent increase in social disharmony and

maladjustment, culminating in violent resolution. Cf. Plato, The Republic (Penguin, Harmondsworth), 1974, at p.366.

- (200) At p.74 of Law, Legislation and Liberty, vol.2.
- (201) Cf. H.B. Acton, Kant's Moral Philosophy, at p.35.
- (202) Cf. Capital, Volume One, at p.300 of The Marx-Engels Reader. This applies equally to all other historically emergent social forms; World History is the process in which the hidden implications of each successive form are "by deed, instead of by argument" (Marx, from Capital, Volume Three, at p.146 of Ernst Fischer's Marx in His Own Words (Penguin, Harmondsworth), 1973.) rendered explicit.
- (203) Cf. Alasdair MacIntyre, at p.212 of A Short History of Ethics (Routledge and Kegan Paul, London), 1967; "for the social and economic forms of that same society imprison the free individual in a set of relationships which nullify his civil and legal freedom and stunt his growth".
- (204) Fischer, at p.78 of Marx in His Own Words.
- (205) George Orwell, in England, Your England, at p.80 of Inside the Whale and Other Essays (Penguin, Harmondsworth), 1962.
- (206) Cf. Grundrisse, at pp.243-4 of The Marx-Engels Reader.
- (207) Cf. Capital, Volume One, at pp.437-8 of The Marx-Engels Reader.
- (208) Ibid, p.438.
- (209) Manifesto of the Communist Party, at p.486 of The Marx-Engels Reader.
- (210) Ibid, at p.480. See also Engels, in The Origin of the Family, Private Property, and State, at p.758 of The Marx-Engels Reader.
- (211) Cf. Peter Singer, at p.23 of Marx. See also p.48, particularly in relation to the passage which Singer quotes from Marx; "the forest of uplifted arms demanding work becomes ever thicker, while the arms themselves become ever thinner." Cf. Wage Labour and Capital, at p.216 of The Marx-Engels Reader.
- (212) Cf. Socialism: Utopian and Scientific, at p.716 of The Marx-Engels Reader.
- (213) From the Economic and Philosophical Manuscripts of 1844, by Marx, at p.84 of The Marx-Engels Reader.
- (214) MacIntyre, in A Short History of Ethics, at p.209.

Footnotes to Chapter 4.

- (1) George Orwell, at p.150 of The Road to Wigan Pier (Penguin, Harmondsworth), 1962.
- (2) Cf. The Holy Family, at p.131 of Karl Marx: Selected Writings ed. David McLellan (University Press, Oxford), 1977.
- (3) In The Holy Family, at p.133 of Selected Writings.
- (4) See for example, A Discourse on the Origin of Inequality in The Social Contract and Discourses (Dent, London), 1973, especially at p.76; "The first man who, having enclosed a piece of ground, betnought himself of saying 'This is mine', and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: 'Beware of listening to this imposter; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.' " See also Bertrand Russell, at p.663 of The History of Western Philosophy (Unwin Ltd., London), 1977.
- (5) From Qu'est-ce que la Propriete, quoted at p.38 of Robert C. Tucker's The Marxian Revolutionary Idea (George Allen & Unwin Ltd., London), 1970.
- (6) Cf. Tucker, at p.39 of The Marxian Revolutionary Idea.
- (7) Cf. Tucker, at p.42 of The Marxian Revolutionary Idea.
- (8) Cf. Tucker, at pp.37-8 of The Marxian Revolutionary Idea.
- (9) Of which Unger writes, "Solidarity is merely love struggling to move beyond the circle of intimacy"; at p.207 of Law in Modern Society, (Collier Macmillan, London), 1977.
- (10) Karl Marx, at p.531 of Critique of the Gotha Programme, in Robert C. Tucker's The Marx-Engels Reader (W.W.Norton & Co., New York), 1978.
- (11) Cf. Robert C. Tucker, at p.38 of The Marxian Revolutionary Idea.
- (12) Cf. chapter 3, at p.104, supra.
- (13) Cf. Karl Marx, in Capital, Vol One, at p.432 of The Marx-Engels Reader; "free labourers, in the double sense that neither they themselves form part and parcel of the means of production, as in the case of slaves, bondsmen, etc., nor do the means of production belong to them, as in the case of peasant proprietors; they are, therefore, free from, unencumbered by, any means of production of their own."
- (14) Cf. Marx's The Holy Family, at p.133 of Selected Writings.
- (15) Cf. chapter 5, at p.173, infra.

- (16) "All these component parts of capital are creations of labour, products of labour, accumulated labour" (Emphasis Marx's); from Wage Labour and Capital, at p.207 of The Marx-Engels Reader.
- (17) Cf. The State and Revolution, by Lenin, at p.199 of The Essential Left (Unwin, London), 1960.
- (18) Cf. Hans Kelsen, at p.9 of The Communist Theory of Law, (Stevens and Sons, London), 1955. See also Marx, in Capital, Volume One, at p.438 of The Marx-Engels Reader; "The capitalist mode of appropriation, the result of the capitalist mode of production, produces capitalist private property. This is the first negation of individual private property, as founded on the labour of the proprietor."
- (19) Cf. chapter 2, at p.63, *supra*.
- (20) Cf. Socialism: Utopian and Scientific, at p.715 of The Marx-Engels Reader. On Marx's belief in the immanence of the revolutionary transition to socialism, cf. The Manifesto of the Communist Party, at p.500 of The Marx-Engels Reader; "the bourgeois revolution in Germany will be but the prelude to an immediately following proletarian revolution." See also Peter Singer, at p.7 of Marx (Oxford University Press), 1980; "His (Marx's) most productive period, in 1857-8, resulted from his mistaking an economic depression for the onset of the final crisis of capitalism. Worried that his ideas would be overtaken by events, Marx began, as he wrote to Engels, 'working madly through the nights' in order to have the outlines of his work clear 'before the deluge'".
- (21) Cf. p.153 of Robert Nozick's Anarchy, State and Utopia, (Blackwell, Oxford), 1974. See also chapter 3, at p.77, *supra*.
- (22) See, for example, the section entitled Critical-Utopian Socialism and Communism in The Manifesto of the Communist Party. See also Critique of the Gotha Program, at p.531 of The Marx-Engels Reader; "Right can never be higher than the economic structure of society and its cultural development conditioned thereby." Further reference may be had to p.59 of Marx by Peter Singer; "Marx derided as 'Utopian' to those socialists who sought to bring about communism by producing blueprints of a future communist society. His own form of socialism was, he claimed, scientific because it built on knowledge of the laws of history that would bring socialism into existence."
- (23) Cf. Robert Tucker, at p.53 of The Marx-Engels Reader.
- (24) Cf. Ziyad I. Husami, at p.32 of "Marx on Distributive Justice", in Philosophical and Public Affairs, 1978, 8, 1.
- (25) See generally Kant's Moral Philosophy (Macmillan, London), 1970. See also Leon Trotsky, at pp.16-17 of Their Morals and Ours, in the anthology of the same name, (Pathfinder Press, New York), 1973.
- (26) At p.198 of The Poverty of Philosophy, in Selected Writings.

- (27) On Marx's materialist conception of history, see Capital, Volume One, at p.300 of The Marx-Engels Reader, in which "the social movement" is described "as a process of natural history, governed by laws not only independent of human will, consciousness and intelligence, but rather, on the contrary, determining that will, consciousness and intelligence." Elsewhere in the same work, at p.438, Marx speaks of World History moving "with the inexorability of a law of Nature", and, at p.296, of "tendencies working with iron necessity towards inevitable results." See also K.R. Popper's systematic critique of this aspect of Marxian theory, The Poverty of Historicism (Routledge and Kegan Paul, London), 1961.
- (28) Taken from a letter to P.V. Annenkov, at p.136 of The Marx-Engels Reader.
- (29) Cf. Capital, Volume Three, at p.113 of Marx in His Own Words (Penguin, Harmondsworth), 1973.
- (30) Marx, in Theories of Surplus Value, at p.475 of Selected Writings. See also Tom Campbell, at p.130 of The Left and Rights (Routledge and Kegan Paul, London), 1983.
- (31) Reproduced at p.683 of The Marx-Engels Reader.
- (32) Socialism: Utopian and Scientific, at p.694 of The Marx-Engels Reader. See also Allen E. Buchanan, in Marx and Justice (Metuen, London), 1982, at p.162, where the author attributes to Marx the view that "conceptions of justice will not play a major motivational role in the revolutionary transition from capitalism to communism."
- (33) Cf. Marx, in Circular Letter to Bebel, Liebknecht, Bracke and Others, at p.555 of The Marx-Engels Reader. See also Trotsky, at p.20 of Their Morals and Ours, (Pathfinder Press, New York), 1973.
- (34) Cf. Preface to A Contribution to the Critique of Political Economy, at p.4 of The Marx-Engels Reader.
- (35) Capital, Volume One, at p.438 of The Marx-Engels Reader; "Centralisation of the means of production and socialisation of labour at last reach a point where they become incompatible with their capitalist integument."
- (36) Capital, Volume One, at p.438 of The Marx-Engels Reader; "The expropriators are expropriated."
- (37) Capital, Volume One, at p.438 of The Marx-Engels Reader; Marx writes of the development "on an ever-extending scale ... the conscious technical application of science, the methodical cultivation of the soil." See also Engels, in Socialism: Utopian and Scientific, at p.716 of The Marx-Engels Reader; "perfecting of machinery".
- (38) Marx, Manifesto of the Communist Party, at p.483 of The Marx-Engels Reader.

- (39) Ernst Fischer, at p.123 of Marx in His Own Words.
- (40) See generally Andrew Boyd, Holy War in Belfast, (Anvil, Dublin), 1969 for a historical example.
- (41) At p.41 of Marx in His Own Words.
- (42) Philosophical and Public Affairs, 1978, 8, 1.
- (43) Philosophical and Public Affairs, Spring 1972, 1, 3.
- (44) At p.199 of The Open Society and Its Enemies, Volume Two, (Routledge and Kegan Paul, London), 1966. According to Popper, Marx's work discloses an implicit moral condemnation of capitalism, which can be inferred from his evaluation of social institutions. However, not all moral condemnations are necessarily based on injustice; my view that justice is not exhaustive of the whole moral field, shall, I hope, become clearer in chapter five.
- (45) The Marxian Critique of Justice, p.273.
- (46) On etnical relativist positions generally, see chapter one, at p.8, supra.
- (47) At pp.33-34 of The Marxian Revolutionary Idea.
- (48) Labour power "or capacity for labour" is defined by Marx in Capital, Volume One, at p.336 of The Marx-Engels Reader.
- (49) The Marxian Critique of Justice, p.261.
- (50) For example, in Capital, Volume One, at p.437 of The Marx-Engels Reader, Marx writes of "the capitalist exploiting ... labourers".
- (51) At p.277 of The Marxian Critique of Justice.
- (52) Cf. the passage from A Treatise of Human Nature which is reproduced at p.31 of Lord Lloyd's Introduction to Jurisprudence, third edition, (Stevens and Sons Ltd., London), 1972.
- (53) This illusion is founded on by neo-naturalist school of thought; see for example Philippa Foot, "Moral Beliefs", reproduced at pp.83-100 of Theories of Ethics, (Oxford University Press), 1967.
- (54) The Marxian Critique of Justice, p.266.
- (55) Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (56) "The theft of the labour time of others on which wealth is based today", Foundations of The Critique of Political Economy, from the passage reproduced at p.106 of Marx in His Own Words.
- (57) In Capital, Volume One, (Penguin, Harmondsworth), 1976, at p.325. Trans. Len Fowkes. See however p.474 of Karl Marx: Selected Writings where the same term is translated as

"extracted", thus obliterating the normative connotation involved.

- (58) At p.30.
- (59) The Marxian Revolutionary Idea, p.36.
- (60) Capital, Volume One, at p.301. See also The Marx-Engels Reader, at p.358. where the German term corresponding to "injustice" is translated as "injury".
- (61) Capital, Volume One, at p.358 of The Marx-Engels Reader.
- (62) Capital, Volume One, at p.300. See also The Marx-Engels Reader, p.357, where the term "creed" is used.
- (63) Capital, Volume One, at p.300.
- (64) Capital, Volume One, at p.300. A similar translation of this passage appears at p.357 of The Marx-Engels Reader.
- (65) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (66) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.
- (67) On Marx's historical materialism, cf. the Preface to A Contribution to the Critique of Political Economy, at p.4 of The Marx-Engels Reader.
- (68) "Marx on Distributive Justice", pp.32-41.
- (69) At p.56 of Marx and Justice.
- (70) Husami, at p.32 of Marx on Distributive Justice.
- (71) Cf. John Rawls, at p.136 of A Theory of Justice, (Oxford University Press), 1973.
- (72) "Marx on Distributive Justice", p.34. It is in this sense that Engels writes of "the proletarian morality of the future"; cf. On Morality, at p.725 of The Marx-Engels Reader.
- (73) "Marx on Distributive Justice", p.40.
- (74) "But theory also becomes a material force once it has gripped the masses"; Contribution to the Critique of Hegel's Philosophy of Right, at p.60 of The Marx-Engels Reader.
- (75) Socialism: Utopian and Scientific, at p.701 of The Marx-Engels Reader.
- (76) Cf. the Preface to A Contribution to the Critique of Political Economy, at p.3 of The Marx-Engels Reader.
- (77) The Marxian Revolutionary Idea, p.44.

- (78) Capital, Volume One, p.326.
- (79) Cf. William J. Barber at p.129 of A History of Economic Thought, (Penguin, Harmondsworth), 1967, at p.129.
- (80) Marx, in Capital, Volume One, at p.357 of The Marx-Engels Reader. There is however nothing very mysterious about the difference between the values of labour and labour power; this is only a particular application of the distinction between exchange and use-value.
- (81) Capital, Volume Three, at p.440 of The Marx-Engels Reader. See also Trotsky, at p.33 of Their Morals and Ours, where it is stated to one aim of the revolution to "render all social relationships completely transparent".
- (82) Capital, Volume Three, at p.440 of The Marx-Engels Reader. See also The Grundrisse, at p.250 of The Marx-Engels Reader, where Marx classifies slavery as "direct forced labour", and wage labour as "indirect forced labour". (Emphasises Marx's).
- (83) Capital, Volume One, p.325.
- (84) Capital, Volume One, at p.513 of Karl Marx: Selected Writings.
- (85) See for example F.A. Hayek, at p.170 of Law, Legislation and Liberty, Volume Three, (Routledge and Kegan Paul, London), 1982; "What prevented him (Marx) from appreciating the signal-function of prices through which people are informed what they ought to do was, of course, his labour theory of value. His vain search for a physical cause of value made him regard prices as determined by labour costs, that is, by what people had done in the past rather than as the signal telling them what they must do in order to be able to sell their products." An impressive and comprehensive critique of the Marxian labour theory of value is given by Nozick between pages 253 and 262 of Anarchy, State and Utopia.
- (86) See for example Utilitarianism by J.S. Mill, at p.6 of Utilitarianism, Liberty and Representative Government, (J.M. Dent, London), 1910.
- (87) One might cite as an example of this "the iniquitous swindle" recorded by Orwell, by which the pit management of his time was in the practice of requiring miners to pay for the hire of their lamps, at a rate of which they effectively bought them several times over in a single year. The Road to Wigan Pier, p.37.
- (88) Marx, Foundations of the Critique of Political Economy, from the passage reproduced at p.106 of Marx in His Own Words.
- (89) The Marxian Revolutionary Idea, p.46.
- (90) Reproduced at p.39 of Selected Writings, and at p.26 of The Marx-Engels Reader.
- (91) See for example p.31; "the existence of religion is the

existence of a defect".

- (92) Selected Writings, p.51. The translation given at p.40 of The Marx-Engels Reader runs somewhat differently.
- (93) Cf. the passage quoted at p.40 of The Marx-Engels Reader.
- (94) Cf. The Marx-Engels Reader, at p.28; "How is an opposition resolved? By making it impossible. And how is religious opposition made impossible? By abolishing religion." It is in the light of these considerations that Marx was later to comment that in promoting "religious freedom of conscience", the Gotha Program "chooses not to transgress the bourgeois level"; Critique of the Gotha Program, at p.540 of The Marx-Engels Reader.
- (95) Selected Writings, p.60. See also the translation given at p.51 of The Marx-Engels Reader.
- (96) The Marx-Engels Reader, p.42. Engels, incidentally, is no more impressed with these familiar bourgeois eulogies than is Marx, referring as he does to "this nopeless fiasco of phrases", in Socialism, Utopia and Scientific, at p.689.
- (97) Selected Writings, p.55; see also the translation given at p.42 of The Marx-Engels Reader.
- (98) Selected Writings, p.53. Again, a similar translation is given at p.42 of The Marx-Engels Reader. This diagnosis, incidentally, accords with Vinogradoff's analysis of legal rules, quoted by Hayek at p.31 of Law, Legislation and Liberty, Volume 2, as "boundaries erected by society in order that its members shall not collide with each other in their actions." Hence, Marx's denunciation, as a right of separation or fragmentation, of the bourgeois conception of liberty, can be more readily understood in terms of Hayek's description of means-directed, as opposed to ends-directed, morality, as outlined in chapter 3, at pp.97-8.
- (99) At p.776 of Capital, Volume Three (Progress Publishers, Moscow), 1966. Cf. Husami at p.35 of "Marx on Distributive Justice".
- (100) Selected Writings, p.53. See also p.42 of The Marx-Engels Reader.
- (101) The socialist principle is considered at length in section (i) of this chapter, at p.110, supra.
- (102) It would appear worthwhile to point out that J.S. Mill is profoundly mistaken in his essay Utilitarianism, in Utilitarianism, Liberty and Representative Government, at p.49, he represents Kant's categorical imperative as enjoining that one must be minded of the interests of all mankind indiscriminately. On the contrary, it is not the private individual, but the law which is to maintain impartiality; the consequent framework of formal equality is in no way incompatible with people treating others other than "indiscriminately".

- (103) Cf. On The Jewish Question, at p.51. of The Marx-Engels Reader; "Only under the sway of Christianity, which objectifies all national, natural, moral and theoretical relationships, could civil society separate itself completely from the life of the state, sever all the species-bonds and dissolve the human world into a world of atomistic, antagonistic individuals."
- (104) The American Constitution of 1795, quoted in On The Jewish Question, at p.55 of Selected Writings, and also at p.43 of The Marx-Engels Reader.
- (105) Quoted at p.118 of Orwell's The Road to Wigan Pier.
- (106) Just how spurious and insubstantial is security in this form is well illustrated by an example taken from Orwell's The Road to Wigan Pier, at p.42; "Disability pensions are not guaranteed by any centralised fund, so that if the colliery company goes bankrupt, that is the end of the disabled miner's pension, though he does figure among the other creditors."
- (107) Cf. chapter 3, at p.76, supra.
- (108) Marx clearly distinguishes between private property, (i.e. in the means of production), and individual property, in the means of consumption; it is only the former which the revolution immediately abolishes; the revolution "does not re-establish private property for the producer, but gives him individual property based on the acquisitions of the capitalist era: i.e., on co-operation and the possession in common of the land and of the means of production"; Capital, Volume One, at p.438 of The Marx-Engels Reader. See also Fischer at p.82 of Marx in His Own Words.
- (109) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (110) On The Jewish Question, at p.60 of Selected Writings.
- (111) At p.525 of The Marx-Engels Reader.
- (112) See generally section (i) of the present chapter, supra.
- (113) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (114) Cf. Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (115) Critique of the Gotha Program, at p.538 of The Marx-Engels Reader.
- (116) Critique of the Gotha Program, at p.528 of The Marx-Engels Reader.
- (117) Critique of the Gotha Program, at p.528 of The Marx-Engels Reader. This would appear to be a clear instance of an end-state principle, in the sense remarked on by Nozick at

p.153 of Anarchy, State and Utopia.

- (118) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader, at which Marx speaks of the distribution of the means of consumption resulting "automatically" from the distribution of the means of production. He also asserts that "it was in general a mistake to make a fuss about so-called distribution (emphasis Marx's) and put the principal emphasis on it." See also p.532.
- (119) Critique of the Gotha Program, at p.528 of The Marx-Engels Reader.
- (120) Capital, Volume One, at p.358 of The Marx-Engels Reader.
- (121) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.
- (122) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.
- (123) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.
- (124) At p.490 of The Marx-Engels Reader.
- (125) At p.490 of The Marx-Engels Reader. Emphasis mine.
- (126) See however Critique of the Gotha Program, at p.541 of The Marx-Engels Reader; "an early combination of productive labour with education is one of the most potent means for the transformation of present day society."
- (127) At p.33.
- (128) Cf. chapter 5, at p.168, *infra*.
- (129) Cf. Fischer, at p.150 of Marx in his Own Words.
- (130) Cf. p.530 of The Marx-Engels Reader. See also Manifesto of the Communist Party, at p.486 of The Marx-Engels Reader.
- (131) Cf. Private Property and Communism, at p.89 of Selected Writings.
- (132) Cf. Manifesto of the Communist Party, at p.486 of The Marx-Engels Reader. See also Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (133) Cf. Critique of the Gotha Program, at p.530 of The Marx-Engels Reader. The concept of labour certificates would appear to have been derived from Robert Owen; cf. Engels, Socialism: Utopian and Scientific, at p.693 of The Marx-Engels Reader.
- (134) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.

- (135) Economic and Philosophical Manuscripts, at p.109 of Selected Writings.
- (136) Critique of the Gotha Program, at p.530 of The Marx-Engels Reader.
- (137) Cf. The Holy Family, at p.133 of Selected Writings. This possibility of doing away with the objectionable features of capitalism, while at the same time retaining the benefits of the spontaneous ordering forces of the market, is in fact taken up in the "market socialism" of Oskar Lange; c.f. Richard T. Gill's Economics - A Text With Readings, (second edition) (Goodyear, California), 1975. On the application of this concept in Yugoslavia, see pp.63-65. Certainly, Marx's assertion that "In a future society ... the time of production devoted to different articles will be determined by the degree of their social utility", from The Poverty of Philosophy, at p.197 of Selected Writings, does not seem quite adequate.
- (138) Critique of the Gotha Program, at p.529 of The Marx-Engels Reader.
- (139) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (140) Critique of the Gotha Program, at p.530 of The Marx-Engels Reader.
- (141) Cf. Anarchy, State and Utopia, at p.163.
- (142) Cf. Capital, Volume One, at p.438 of The Marx-Engels Reader. See also Socialism: Utopian and Scientific, at p.714 of The Marx-Engels Reader, where Engels mentions "the complete development of modern productive forces."
- (143) On the ever growing inadequacy of the nation state in this context, c.f. chapter 2, at p.67, supra.
- (144) See, for example, Russell, The Case for Socialism, at p.92 of In Praise of Idleness, (Unwin, London), 1976. In such an event, incidentally, where would the state capital fund for credit come from? From expropriation, or from loans from citizens? In such an event, the state would be the intermediary between lender and borrower, this arrangement being by no means incompatible with the laws of supply and demand.
- (145) On the essential alienability of rights, see chapter 3, at p.72, supra.
- (146) This is the essential theme of the critique of Nozick's Anarchy, State and Utopia, given in chapter 3, section 2, at pp.70-95, supra.
- (147) The Manifesto of the Communist Party, at p.489 of The Marx-Engels Reader.

- (148) Critique of the Gotha Program, at p.530 of The Marx-Engels Reader; "principle and practice are no longer at loggerheads".
- (149) Critique of the Gotha Program, at p.530 of The Marx-Engels Reader; "The right of the producers is proportional to the labour they supply."
- (150) Cf. footnote (147).
- (151) Manifesto of the Communist Party, at p.489 of The Marx-Engels Reader.
- (152) Marx on Distributive Justice, p.46. See also p.190 of Problems of Political Philosophy (MacMillan, London), 1970, for a similar pronouncement by D.D. Raphael.
- (153) In The State and Revolution, at p.230 of The Essential Left.
- (154) The State and Revolution, at p.229 of The Essential Left.
- (155) At p.531 of The Marx-Engels Reader.
- (156) Reference may be had to my earlier discussion of Warnock's assertions on rules of conduct as a remedy for limited altruism, in chapter 1, at p.46.
- (157) At p.58 of Marx and Justice.
- (158) Cf. p.143.
- (159) Marx and Justice, p.59.
- (160) Marx and Justice, p.162.
- (161) 13th March, 1983.
- (162) (Routledge & Kegan Paul; London), 1981.
- (163) At p.127 of the present chapter.
- (164) Cf. chapter two, at p.56, supra.
- (165) Cf. chapter three, at p.90, supra.
- (166) Cf. Critique of the Gotha Program, at p.530 of The Marx-Engels Reader, and also p.110 of the present chapter, supra.
- (167) Cf. p.106, supra.
- (168) Reproduced at p.618 of The Marx-Engels Reader.
- (169) At p.632 of The Marx-Engels Reader.
- (170) Cf. Lloyd's Introduction to Jurisprudence, third edition, at p.648.
- (171) Cf. section (iii) of the present chapter, at p.143, infra.

- (172) This paradox, whereby the very circumstances which require the institution of rules of just conduct are those which render justice unattainable, is remarked on by Buchanan thus; "the circumstances which produce the need for conceptions of justice and rights are precisely those circumstances in which the demands of such conceptions cannot be adequately satisfied". Marx and Justice, at p.162.
- (173) Cf. A Theory of Justice, by John Rawls, at p.57. See also The Left and Rights by Tom Campbell, at p.173.
- (174) A Theory of Justice by John Rawls, at p.281. See also G.J. Warnock, in The Object of Morality (Methuen, London), 1971, at p.14; "there is the possibility, envisaged by Kant, of rational beings who would not always see straight off what action it was that was morally right, or required, but would always be thereby led to do it, and would never have the least inclination towards doing anything else. For them, at least moral exhortation and persuasion would be simply unnecessary; ex hypothesi there would be nothing in their doings to be condemned, and perhaps, if it was simply natural to them to act in that way, moral commendation would be out of place".
- (175) Cf. A Theory of Justice, at p.281.
- (176) Cf. Critique of the Gotha Program, at p.531 of The Marx-Engels Reader and Engels, Socialism: Utopian and Scientific, at p.715 of The Marx-Engels Reader.
- (177) Eg. by Alasdair McIntyre, in A Short History of Ethics (Routledge & Kegan Paul, London), 1967.
- (178) A Short History of Ethics, at p.214.
- (179) Cf. my earlier comments on utilitarianism, at p.73, supra.
- (180) In Utilitarianism, at p.185 of Selected Writings.
- (181) Cf. chapter 2, at p.57, supra.
- (182) On "collective goods", cf. p.6 of F.A. Hayek's Law, Legislation and Liberty, Volume Two.
- (183) Cf. Manifesto of the Communist Party, at p.490 of The Marx-Engels Reader.
- (184) A Theory of Justice, at p.33.
- (185) Cf. Peter Singer, at p.63 of Marx.
- (186) Hayek would also, of course, support this view that in the society based on private property, there are no common social ends; see generally chapter 3, section (iii) at p.95, supra.
- (187) Such as Nozick's; see chapter 3, section (ii), at p.70, supra.

- (188) G.W.F. Hegel, at p.4 of Philosophy of Right (Oxford University Press), 1979.
- (189) It was of course in connection with this model that it was earlier claimed that will itself exists in duplicated, alienated, self-negatory form, that is, in the self-opposition of the phenomenal and noumenal wills; this opposition exists in addition to such conflict of wills which may arise as a consequence of class antagonisms. Cf. chapter 2, p.51, *supra*.
- (190) The Marxian Critique of Justice, p.246.
- (191) This would seem to follow inescapably from the undiluted ethical relativism which he attributes to Marx.
- (192) The Marxian Critique of Justice, p.273.
- (193) Cf. Capital, Volume Three, at p.490 of Selected Writings.
- (194) Cf. p.281 of The Marxian Critique of Justice; "I think it would be wrong, in fact, to suppose that Marx's critique of capitalism is necessarily rooted in any particular moral or social ideal or principle."
- (195) The same thought is expressed by Sir Karl Popper thus; "The principles of humanity and decency were for him (Marx) matters that needed no discussion, matters to be taken for granted"; The Open Society and its Enemies, Volume Two, at p.199, (Routledge & Kegan Paul, London), 1966, at p.198.
- (196) Cf. Albert S. Lindemann, A History of European Socialism, (Yale University Press), 1983, at pp.203-4. Indeed, as this author suggests, it is perhaps more correct to say that the revolution was the consequence of chaos, the "fundamental disruption of Russia's economy" (p.204) occasioned by the Great War. At p.203, Lindemann proposes the view that the Bolsheviks did not so much seize power as preside over a process of social disintegration created by "a wave of popular indignation and resentment".
- (197) Marx, from The German Ideology. Cf. p.162 of The Marx-Engels Reader. For this translation, cf. Allen W. Wood at p.269 of The Marxian Critique of Justice.
- (198) Cf. Lindemann, A History of European Socialism, at pp.282-3.
- (199) Cf. Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (200) See generally The State and Revolution, reproduced in The Essential Left.
- (201) Cf. Lindemann, at p.277 of A History of European Socialism.
- (202) See generally Critique of the Gotha Program, at p.530 & 531 of The Marx-Engels Reader. Such a demand was however made by Proudhon; cf. E.P.M., at p.80 of The Marx-Engels Reader.

- (203) As opposed to formal equality; cf. D.D. Raphael, at p.187 of Problems of Political Philosophy, (MacMillan, London), 1970.
- (204) Cf. A Theory of Justice, at p.75.
- (205) Cf. The State and Revolution, at p.230 of The Essential Left.
- (206) At p.34 of The Communist Theory of Law.
- (207) At p.50 of The Communist Theory of Law.
- (208) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (209) Critique of the Gotha Program, at pp.530-1 of The Marx-Engels Reader.
- (210) Critique of the Gotha Program, at p.530 of The Marx-Engels Reader.
- (211) From The Poverty of Philosophy, at p.208 of Selected Writings.
- (212) The State and Revolution, at pp.235 & 237 of The Essential Left.
- (213) Cf. F.A. Hayek, at p.170 of Law, Legislation and Liberty, Volume Three; "the most destructive of the constructivistic morals is egalitarianism - for which Karl Marx can certainly not be blamed". (Emphasis Hayek's). See also Engels' discussion of equality at pp.143-9 of Anti-Duhring/Herr Eugen Duhring's Revolution in Science, (Lawrence and Wishart, London), 1955.
- (214) At p.20 of In Praise of Idleness.
- (215) At p.114 of In Praise of Idleness.
- (216) At p.84 of Law, Legislation and Liberty, Volume Two. Such a departure from equal standards in distribution has been the actual experience of command economies; cf. p.54 of Gill's Economics - A Text With Readings.
- (217) Cf. T.D. Campbell, at p.173 of The Left and Rights.
- (218) "But these defects are inevitable in the first phase of communist society as it is when it has just emerged after prolonged birth pangs from capitalist society"; Critique of the Gotha Program, at p.52 of The Marx-Engels Reader.
- (219) See generally chapter 1, section (iv), at p.26, supra.
- (220) Marx's apparent equation of self-interest with selfishness (see for example On The Jewish Question, at p.60 of Selected Writings) is, for this reason, I would contend, misconceived.
- (221) Marx's cheerful vision of the prefectability of human nature contrasts directly with Calvin's position; "For our nature

is not merely empty and destitute, but, it is so fecund of every kind of evil that it cannot be inactive."; cf. Calvin, by Francois Wendel, (Collins, London), 1965, at p.188. On the malleability and evolution of the human condition, see Bertrand Russell, at p.153 of Bertrand Russell's Best, and also Peter Singer, at p.9 of Hegel, and at pp.61, 73 & 74 of Marx. However, even if the human condition does indeed alter from age to age, are we entitled to say that human nature, as opposed to merely human behaviour, changes? Even if we concur with Marx in every other respect, would it not appear correct to assert that contingency upon economic factors is an enduring and permanent feature of human nature?

- (222) Consider the following passages from Calvin, which afford an interesting parallel with Marx's view that the phenomenon of law is indispensibly linked with human vice; at p.213 of Calvin, by Francois Wendel, he is quoted as identifying the mission of the law as being "to command all things that are good and just, to forbid all wickedness, to promise reward to all who observe righteousness, to threaten sinners with the vengeance of God, without its being able to change or correct the perversity which exists in all men by nature". And, at p.132; "The Law itself was given to man to show him how far he is from the right path. In the Law we see, as in a mirror, our sins and our condemnation".
- (223) In Fourth Anniversary of the October Revolution, in V.I.Lenin, Lenin: Selected Works, (Lawrence and Wishart, London), 1969, at p.651. Here Lenin acknowledges the role of "personal interest" - inclusive of private commerce - in building from a peasant economy, "socialism by way of state capitalism".
- (224) Quoted in Lenin's The State and Revolution, at p.218 of The Essential Left.
- (225) In Versus the Anarchists, at p.728 of The Marx-Engels Reader.
- (226) Cf. The Origin of the Family, Private Property and the State, at p.752 of The Marx-Engels Reader, where Engels denies, against the anarchists, that the state is a power imposed upon society by some external force, and asserts that it is a product of society at a certain stage of its development.
- (227) Lenin, in The State and Revolution, at p.172 of The Essential Left.
- (228) Critique of the Gotha Program, by Karl Marx, at p.538 of The Marx-Engels Reader; "Between capitalist and communist society lies the period of the revolutionary transformation of the one into the other. There corresponds to this also a political transition in which the state can be nothing but the revolutionary dictatorship of the proletariat."
- (229) "The expropriators are expropriated"; Marx, Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (230) In On Authority, at p.733 of The Marx-Engels Reader.

- (231) Cf. Capital, Volume One, at p.438 of The Marx-Engels Reader.
- (232) Cf. The Eighteenth Brumaire of Louis Bonaparte, at p.607 of The Marx-Engels Reader.
- (233) Cf. Socialism: Utopian and Scientific, at p.713 of The Marx-Engels Reader.
- (234) Lloyd, at p.22 of The Idea of Law, (Penguin, Harmondsworth), 1974.
- (235) Cf. Engels, Socialism: Utopian and Scientific at p.114 of The Marx-Engels Reader.
- (236) Cf. chapter 2, section (iii), at p.62, supra.
- (237) Cf. Hans Kelsen, at p.38 of The Communist Theory of Law.
- (238) Engels, quoted by Lenin, in The State and Revolution, at p.218 of The Essential Left.
- (239) Lenin, in The State and Revolution, at p.226 of The Essential Left.
- (240) C.S. Lewis, Mere Christianity, (Collins, Glasgow), 1977, at p.17.
- (241) Mere Christianity, at p.16.
- (242) See for example Fischer, Marx in His Own Words, chapter 1, The Dream of the Whole Man, at p.15.
- (243) The State and Revolution, at p.228 of The Essential Left. These pronouncements of Lenin's, incidentally, make interesting comparison with Trotsky's dictum, in The Moralists and Sycophants against Marxism, at p.62 of Their Morals and Ours; "To my knowledge Lenin did not write on morality".
- (244) Cf. p.489 of The Marx-Engels Reader.
- (245) Critique of the Gotha Program, at p.531 of The Marx-Engels Reader.
- (246) Acton, at p.11 of Kant's Moral Philosophy. See also Campbell at p.36 of The Left and Rights; "Legalism appears, therefore, to be the antithesis of the freedom, spontaneity and purposive outlook which many theorists see as the hallmarks of socialism."
- (247) See for example H.L.A. Hart's The Concept of Law, (Oxford University Press), 1961, at p.1.
- (248) The Origin of the Family, Private Property and the State, at p.751 of The Marx-Engels Reader.
- (249) On Morality, at p.726 of The Marx-Engels Reader.
- (250) On Morality, at p.726 of The Marx-Engels Reader.

- (251) On Morality, at p.726 of The Marx-Engels Reader.
- (252) On Morality, at p.726 of The Marx-Engels Reader.
- (253) Cf. Campbell, at p.17 of The Left and Rights; "Removing the causes of violations of moral rights could thus have the effect of rendering legal rights redundant, but socialist societies could still be highly valued because they effectively promoted the moral rights of their members."
- (254) Cf. chapter 2, section (ii), at p.45, supra.
- (255) On Morality, at p.726 of The Marx-Engels Reader. Emphasis mine.
- (256) See also the passage in which Engels says of the inequality of rights and obligations in bourgeois society that "this is not as it ought to be"; The Origin of the Family, Private Property and the State, at p.758 of The Marx-Engels Reader.
- (257) At p.125 of The Left and Rights.
- (258) Cf. chapter 2, at p.57, supra.
- (259) At pp.124 & 132 of The Left and Rights.
- (260) Law, Legislation and Liberty, Volume Two, at p.106.
- (261) At p.146 of the present chapter, supra.
- (262) Cf. The Left and Rights, at p.27; "we are not engaged in a general overview of socialism and its evaluation but in studying the theoretical compatibility of rights and socialism. For this purpose I have posited a society in which there are no radical or insurmountable differences and clashes of interest."
- (263) Cf. p.83 of The Left and Rights.
- (264) The concept of justice as merely a species of moral/legal value is examined in detail in chapter 5, at p.179, infra.
- (265) Cf. The Left and Rights, p.124.
- (266) The Left and Rights, p.27.
- (267) See generally section (i) of the present chapter, at p.110, supra.
- (268) The Left and Rights, p.7.
- (269) The Left and Rights, p.15.
- (270) The Left and Rights, p.84.
- (271) The Left and Rights, p.84.
- (272) The Left and Rights, p.17.

- (273) The Left and Rights, p.102.
- (274) The Left and Rights, p.58.
- (275) Cf. The Left and Rights, p.123.
- (276) Cf. The Concept of Law, pp.80-81.
- (277) Quoted at p.65 of The Left and Rights.
- (278) The Left and Rights, p.65.
- (279) Cf. The Left and Rights, p.82. See also chapter 2, section (ii), *supra*, at p.53.
- (280) The Left and Rights, p.82.
- (281) The Left and Rights, p.81.
- (282) Cf. chapter 1, section (iii), at p.23, *supra*.
- (283) The Left and Rights, p.35.
- (284) The Left and Rights, p.45.
- (285) The Left and Rights, p.45.
- (286) The Left and Rights, p.145. See for example The Weights and Measures Act, 1963, s.5(i), in terms of which it is the duty of each local weights and measures authority to provide for the use of their inspectors working standards, testing equipment, and stamping equipment such "as are proper and sufficient for the effective discharge by those inspectors of their functions in the authority's area".
- (287) The Left and Rights, p.142.
- (288) Cf. The Left and Rights, p.52.
- (289) Cf. The Left and Rights, p.56.
- (290) The Left and Rights, p.49.
- (291) Cf. Engels, Versus the Anarchists, at p.729 of The Marx-Engels Reader.
- (292) The Left and Rights, p.123.
- (293) In On Authority, at p.731 of The Marx-Engels Reader.
- (294) Versus the Anarchists, at p.729 of The Marx-Engels Reader.
- (295) In On Authority, at p.731 of The Marx-Engels Reader.
- (296) The Left and Rights, p.8.
- (297) The Left and Rights, p.150.

- (298) The Left and Rights, p.79.
- (299) The Origin of the Family, Private Property and the State, at p.753 of The Marx-Engels Reader.
- (300) Cf. chapter 1, p.3, supra.
- (301) The Left and Rights, p.64.
- (302) Cf. The Left and Rights, p.77.
- (303) The leading article from the Kolnische Zeitung, at p.18 of Selected Writings.
- (304) Reproduced in the anthology of the same name; (Pathfinder, New York), 1973.
- (305) Their Morals and Ours, p.15. See also Bertrand Russell in Philosophy and Politics, in Unpopular Essays, (Unwin, London), 1976, at p.29.
- (306) Cf. chapter 3, section (ii), at p.70, supra.
- (307) It would appear, therefore, that for Trotsky revolutionary morality and revolutionary strategy were in no way distinct. It is of course necessary, as John Dewey points out, in Means and Ends, at p.69 of Their Morals and Ours, to ensure that the objective consequences of action are the same as those which are objectively intended; it seems, incidentally, that the question of what are the means which will in fact lead to the coming of perfect communism is all that separated Trotsky from Stalin; cf. Their Morals and Ours, pp.25, 51. See also the passage from Stalin's Political Report of the Central (Party) Committee to the XVI Congress at p.666 of Lloyd's Introduction to Jurisprudence. Hence, K.R. Popper's thesis that if there is to be a proper and scientific search for the correct and most effective means of pursuing social objectives, democracy is essential. Cf. p.77 of Popper by Bryan Magee, (Collins, Glasgow), 1973. Conversely, as we have seen, at p.84 of chapter 3, section (ii), supra, Nozick does not admit that there are any proper social objectives, and hence democracy is superfluous to this account.
- (308) Cf. pp.20 and 37-8 of Their Morals and Ours.
- (309) Cf. Their Morals and Ours, p.38; Trotsky appears to believe that the "historical content of the class struggle" can justify anything. See also George Novack's somewhat inept handling of this issue in Liberal Morality; The Controversy between John Dewey and Leon Trotsky, at p.92 of Their Morals and Ours.
- (310) Cf. Trotsky's discussion of "frame-ups" at p.49 of Their Morals and Ours.
- (311) Cf. p.57 of Their Morals and Ours.

- (312) Cf. p.22 of Their Morals and Ours. Hence, for Trotsky, the revolutionary liberation of humanity becomes the touchstone of what is right and wrong, and as such replaces the categorical imperative at the centre of the ethical order.
- (313) Cf. p.56 of Their Morals and Ours.
- (314) Cf. p.56 of Their Morals and Ours. See also p.11 of H.B. Acton's Kant's Moral Philosophy; "Kant argues ... that these principles cannot depend on statements about what generally produces happiness just because they are necessarily and universally valid".
- (315) Cf. p.22 of Their Morals and Ours.
- (316) Cf. p.21 of Their Morals and Ours.
- (317) The Bible, Exodus, chapter 20 verse 13. See also p.21 of Their Morals and Ours.
- (318) Cf. p.17 of Their Morals and Ours.
- (319) Hence, to subordinate the class-struggle to abstract norms "means in fact to disarm the workers in the face of an enemy armed to the teeth". Trotsky, from The Moralists and Sycophants against Marxism, at p.56 of Their Morals and Ours.
- (320) Cf. pp.22 and 36 of Their Morals and Ours.
- (321) Their Morals and Ours, at p.38.
- (322) On the evidence of Capital, Volume One, at p.438 of The Marx-Engels Reader, it would seem that the proletarian revolution could be attained in a relatively smooth transition.
- (323) At p.13 of Their Morals and Ours, Trotsky makes much of "triumphant reaction", and "approaching reaction".
- (324) See also George Novack, in Liberal Morality; The Controversy Between John Dewey and Leon Trotsky, at p.83 of Their Morals and Ours.
- (325) At p.40 of Kant's Moral Philosophy.
- (326) At p.22 of Their Morals and Ours.
- (327) Cf. section (iii) of the present chapter, at p.150, supra.
- (328) In section (iv), at p.31, supra.
- (329) Their Morals and Ours, p.48. See also Engels, in Socialism: Utopian and Scientific, at p.696 of The Marx-Engels Reader.
- (330) At p.20 of Their Morals and Ours.
- (331) At p.48 of Their Morals and Ours.
- (332) Cf. chapter 1, section (ii), at p.16, supra.

Footnotes to Chapter 5.

- (1) R.M. Unger, at p.197 of Law in Modern Society (Macmillan, New York), 1977.
- (2) Cf. footnote (20) to chapter 4, supra. See also Marx in his letter to Engels under the heading Europocentric World Revolution, at p.676 of The Marx-Engels Reader, (W.W. Norton & Co., New York), 1978.
- (3) Hence, in Capital, Volume One, at p.296 of The Marx-Engels Reader; "The country that is more developed industrially only shows, to the less developed, the image of its own future." See also Marx in his Speech at the Anniversary of the People's Paper at p.578 of The Marx-Engels Reader.
- (4) In Capital, Volume One, at p.437 of The Marx-Engels Reader, Marx discusses this "centralisation of capital". See also p.438.
- (5) Cf. Capital, Volume One, at p.438 of The Marx-Engels Reader. See also Marx's Wage Labour and Capital, at p.216 of The Marx-Engels Reader; "the working class gains recruits from the higher strata of society also", thrown down into their ranks by the action of economic competition.
- (6) This process of polarisation is described by Marx in Capital, Volume One, between pp.436-8 of The Marx-Engels Reader.
- (7) See for example Marx in The Grundrisse, at pp.291-2 of The Marx-Engels Reader. See also Marx's Wage Labour and Capital at p.217 of The Marx-Engels Reader.
- (8) Cf. Capital, Volume One, at pp.437-8 of The Marx-Engels Reader. See also Marx, in the preface to A Contribution to the Critique of Political Economy, at p.5 of The Marx-Engels Reader; "No social order ever perishes before all the productive forces for which there is room in it have developed; and new, higher relations of production never appear before the material conditions of their existence have matured in the womb of the old society itself." See also Marx's The Future Results of British Rule in India, at pp.659 & 663 of the same volume.
- (9) In Capital, Volume One, at p.438 of The Marx-Engels Reader, Marx refers to "the entanglement of all peoples in the net of the world-market", and "the international character of the capitalistic regime". See also Speech on Free Trade, at pp. 269-70 of Karl Marx: Selected Writings, ed. David McLellan, (Oxford University Press), 1977, and The Future Results of British Rule in India, at p.663 of The Marx-Engels Reader. A clear statement was contained in Marx's letter to Engels under the heading Eurocentric World Revolution, at p.676 of The Marx-Engels Reader; "The specific task of bourgeois society is the establishment of a world market."

- (10) See for example Bryan Magee, at pp.96-7 of Popper (Collins, Glasgow), 1973, and Peter Singer, at p.67 of Marx (Oxford University Press), 1980.
- (11) Peter Singer, at p.10 of Hegel (Oxford University Press), 1983.
- (12) Cf. Peter Singer, at p.41 of Marx; "like Hegel, Marx thought that history is a necessary process heading towards a discoverable goal". The sense of the progressive revelation of the significance of the historical process, and the role of conflict and opposition are also retained. This aspect of Marxist doctrine has never been wholly laid to rest by the Soviet government. Reference may be had to the article entitled "Gorbachev Buries Khrushchev" which appears at p.21 of the "Sunday Times" of 27th October, 1985, in which the following dictum appeared; "While Gorbachev's plan (for the economy) continues to insist that capitalism is doomed it sets no date when it would finally collapse and avoids Khrushchev's gleeful remarks that he would soon be dancing on capitalism's grave."
- (13) Cf. Marx in Capital, Volume One, at p.302 of The Marx-Engels Reader; "The mystification which dialectic suffers in Hegel's hands, by no means prevents him from being the first to present its general form of working in a comprehensive and conscious manner. With him it is standing on its head. It must be turned right side up again, if you would discover the rational kernel within the mystical shell." See also Engels, in Socialism: Utopian and Scientific, at p.697 of The Marx-Engels Reader. For a statement of the substantive dependence of ideological forms upon the economic base of society, and of Marx's application of dialectics to the analysis of the mechanics of social transformation, cf. The Preface of A Contribution to the Critique of Political Economy, at p.5 of The Marx-Engels Reader; "At a certain stage of their development the material productive forces of society come in conflict with the existing relations of production, or - what is but a legal expression for the same thing - with the property relations within which they have been at work hitherto. From forms of development of the productive forces these relations turn into their fetters.. Then begins an epoch of social revolution. With the change of the economic foundation the entire immense superstructure is more or less rapidly transformed." This method is specifically applied to the transition from capitalism to socialism in Capital, Volume One, at p.438 of The Marx-Engels Reader; "The monopoly of capital becomes a fetter upon the mode of production, which has sprung up and flourished along with, and under it. Centralisation of the means of production and socialisation of labour at last reach a point where they become incompatible with their capitalist integument. This integument is burst asunder. The knell of capitalist private property sounds. The expropriators are expropriated." Again, in Marx's The Coming Upheaval, at p.218 of The Marx-Engels Reader; "For the oppressed class to be able to emancipate itself it is necessary that the productive powers already acquired and the existing social relationships

should no longer be capable of existing side by side." Reference may also be had to Wage Labour and Capital at p.207 of The Marx-Engels Reader, and to the following passage from Critique of the Gotha Program, at p.531 of the same volume; "Right can never be higher than the economic structure of society and its cultural development conditioned thereby."

- (14) In Capital, Volume One, at p.297 of The Marx-Engels Reader. Similarly, in The Future Results of British Rule in India, at p.663 of The Marx-Engels Reader, Marx refers to "the inherent laws of political economy". See also Engels' Speech at the Graveside of Karl Marx, at p.681 of the same volume; "Just as Darwin discovered the law of development of organic nature, so Marx discovered the law of development of human history", and, "Marx also discovered the special law of motion governing the present-day capitalist mode of production and the bourgeois society that this mode of production has created."
- (15) Cf. footnote (4) to chapter 1.
- (16) Cf. footnote (27) to chapter 4. A further passage suggestive of inexorability is that contained in Marx's Economic and Philosophical Manuscripts of 1844 at p.82 of The Marx-Engels Reader.
- (17) The elemental concepts of cultural evolution are introduced in chapter 2; supra.
- (18) See generally chapter 2, at p.53, supra.
- (19) Cf. chapter 2, at p.62, supra, and chapter 4, footnote (221), supra.
- (20) Hans Kelsen, at p.43 of The Communist Theory of Law (Stevens and Sons, London), 1955.
- (21) Kelsen, at p.44 of The Communist Theory of Law. See also Magee at pp.94-6 of Popper.
- (22) Thomas Robert Malthus, at p.68 of An Essay on the Principle of Population, (Penguin, Harmondsworth), 1970.
- (23) Reproduced at pp.156-161 of Richard T. Gill's Economics - A Text With Readings (second edition) (Goodyear, California), 1975.
- (24) Cf. Marx was Wrong and so is Khrushchev, at p.158.
- (25) Cf. Robert Nozick, at pp.18-22 of Anarchy, State and Utopia (Blackwell, Oxford), 1974.
- (26) Cf. Engels, at p.743 of The Origin of the Family, Private Property and the State in The Marx-Engels Reader; "That the concrete economic situation compels the worker to forego even the slightest semblance of equal rights - this again is something the law cannot help."

- (27) The Civil War in France, at p.630 of The Marx-Engels Reader. See also Engels in The Marx-Engels Reader, at p.753 of The Origin of the Family, Private Property and the State; "the modern representative state is an instrument of exploitation of wage labour by capital". See however Engels' letter to Joseph Bloch, at p.763 of The Marx-Engels Reader, in which Engels, near to the end of his life, considerably modified this position; "All the more so the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class - this in itself would offend the 'conception of right'."
- (28) Cf. Engels in The Tactics of Social Democracy, at p.565 of The Marx-Engels Reader; "when Bismarck found himself compelled to introduce this franchise as the only means of interesting the mass of the people in his plans, our workers immediately took it in earnest and sent August Bebel to the first, constituent Reichstag". See also p.570; "In Belgium last year the workers forced the adoption of the franchise." From at least 1848, Marx himself was aware of the possibility of such a development, if not of its full implications; "In all these battles it (the bourgeoisie) sees itself compelled to appeal to the proletariat, to ask for its help, and thus, to drag it into the political arena."
- (29) Cf. Harvey and Bather, at p.20 of The British Constitution (3rd ed) (MacMillan, London), 1963.
- (30) Cf. Engels, in The Tactics of Social Democracy, at p.566 of The Marx-Engels Reader; "With this successful utilisation of universal suffrage, however, an entirely new method of proletarian struggle came into operation."
- (31) The Tactics of Social Democracy, at p.566 of The Marx-Engels Reader.
- (32) John Rawls, at p.87 of A Theory of Justice (Oxford University Press), 1973.
- (33) Cf. the National Insurance Acts 1965 to 1974, the Family Allowances Act, 1965, the Ministry of Social Security Act 1966, and the Family Income Supplement Act 1970. The same legislative design of directly meeting basic needs is in evidence in the Prices Act 1974. Section 1 invests the Secretary of State with the power to subsidise milk, butter, cheese, flour or any other food that he might specify by order. Section 2 empowers him to regulate the prices of these same basic foodstuffs, together with bread, and "any other food or non-food which is essential and affects the cost of living of people on low incomes". Marx discusses the limited "social security" arrangements, in the form of "funds for those unable to work etc.", in the first phase of post-revolutionary society, in Critique of the Gotha Program, at p.529 of The Marx-Engels Reader. See also chapter 4, p. 129, and footnote (122).
- (34) Cf. Critique of the Gotha Program, at p.529 of The Marx-Engels Reader, and Manifesto of the Communist Party, at p.490

of the same volume. See also footnote (35) infra.

- (35) In Critique of the Gotha Program, at p.529 of The Marx-Engels Reader, Marx discusses deductions from the total social output to cover "the common satisfaction of needs, such as schools, health services, etc."
- (36) Cf. the Housing Finance Act 1972.
- (37) Cf. Manifesto of the Communist Party, at p.490 of The Marx-Engels Reader.
- (38) Cf. the Income and Corporation Taxes Act 1970, and the Finance Act 1971. Cf. Manifesto of the Communist Party at p.490 of The Marx-Engels Reader.
- (39) Cf. the Public Health Acts 1936 and 1961.
- (40) Cf. the Housing, Town Planning, Etc. Act 1909, and the Town and Country Planning Act 1971.
- (41) The Local Government Act 1888 made the maintenance of roads and highways the responsibility of the county councils.
- (42) Cf. the Fair Trading Act 1973.
- (43) Cf. the Weights and Measures Act 1963.
- (44) See for example the Town and Country Planning Act 1971.
- (45) Cf. chapter 3, section (iii), at p.97, supra.
- (46) (MacMillan, New York), 1977.
- (47) Cf. Law in Modern Society, pp.192-203.
- (48) Cf. Law in Modern Society, pp.197-9.
- (49) Cf. Law in Modern Society, p.201.
- (50) Law in Modern Society, p.193.
- (51) Cf. Law, Legislation and Liberty (Routledge & Kegan Paul, London), 1982, volume 2, p.135; "In substance, this has meant that the individual is no longer bound only by rules which confine the scope of his private actions, but has become increasingly subject to the commands of authority."
- (52) Berle, at p.159 of Marx was Wrong and so is Khrushchev.
- (53) See for example Manifesto of the Communist Party, at p.473 of The Marx-Engels Reader.
- (54) Law in Modern Society, p.198.
- (55) Cf. chapter 3, section (iv) at p.105, supra, for a fuller discussion of this point.

- (56) Robert C. Tucker, at p.51 of The Marxian Revolutionary Idea (Unwin, London), 1970.
- (57) Cf. H.L.A. Hart, at p.115 of The Concept of Law (Oxford University Press), 1961.
- (58) In the Circular Letter to Bebel, Liebknecht, Bracke and Others which is reproduced at p.551 of The Marx-Engels Reader, Marx quotes from The Socialist Movement in Germany in Retrospect; "Precisely at the present time, under the pressure of the Anti-Socialist Law, the Party is showing that it is not inclined to pursue the path of violent bloody revolution but is determined ... to follow the path of legality, that is, of reform."
- (59) Cf. Critique of the Gotha Program, at p.531 of The Marx-Engels Reader. See also Engels in The Tactics of Social Democracy, at p.558 of the same volume; "What, besides, gives our work quite special significance is the circumstance that it was the first to express the formula in which, by common agreement, the workers' parties of all countries in the world briefly summarise their demand for economic transformation: the appropriation of the means of production by society."
- (60) See for example Husami, in "Marx on Distributive Justice," in Philosophy and Public Affairs, 1978, 8, 1, p.60, where he contends Tucker's claim that Marx considered reform to be a dangerous distraction from the main revolutionary issue, is "profoundly mistaken". Indeed, Husami can adduce a certain amount of documentary backing for his position, notably Marx's espousal of "the modest Magna Carta of a legally limited working-day"; cf. Capital, Volume One, at p.476 of Karl Marx: Selected Writings ed. McLellan (Oxford University Press), 1977. It would seem that in the early works of Marx at least the tension between revolution and reform was unresolved.
- (61) This opposition is unquestionably the main underlying theme of both Critique of the Gotha Program and the Circular Letter to Bebel, Liebknecht, Bracke, and Others.
- (62) Engels, in The Tactics of Social Democracy, at p.566 of The Marx-Engels Reader.
- (63) At p.552 of The Marx-Engels Reader.
- (64) At p.553 of The Marx-Engels Reader. It was observations such as this which prompted Tucker to allude to Marx's opposition to divergence into "the pathways of piecemeal reform within the present order"; The Marxian Revolutionary Idea, at p.51.
- (65) At p.65 of Law, Legislation and Liberty, volume 2.
- (66) The Bible, John, chapter 14, verse 6.
- (67) Marx's (unfavourable) view of the distributivist tendency are made unequivocally clear in Critique of the Gotha Program, at pp.531-2 of The Marx-Engels Reader. Cf. chapter 4, section (ii), at p.128, *supra*, and footnote (118) to chapter 4.

- (68) Cf. the Circular Letter, at p.554 of The Marx-Engels Reader; "Where the class struggle is pushed aside as a disagreeable 'coarse' phenomenon, nothing remains as a basis for socialism but 'true love of humanity' and empty phraseology about 'justice'".
- (69) I have in mind here the role of the "survival of the fittest" in Darwin's theory of evolution, cf. Marx, On Darwin, at pp.525-6 of Selected Writings, or of the role of conflict as between nation states in Hegel's world view; cf. Lord Lloyd, at p.631 of Introduction to Jurisprudence, 3rd Edition, (Stevens and Sons Ltd., London), 1972.
- (70) See generally chapter 4, section (iii), at p.147, supra.
- (71) Cf. Article 23 of the 1948 Universal Declaration of Human Rights.
- (72) See for example chapter 4, section (ii), at p.147, supra.
- (73) Cf. The Left and Rights, at p.173.
- (74) At p.189 of Problems of Political Philosophy (MacMillan, London), 1970.
- (75) At p.73 of Law, Legislation and Liberty, Volume 2, he apparently subscribes to a criterion of justice according to which transactions are just when entered into other than under "fraud, monopoly, and violence".
- (76) This would also appear to be the guiding principle behind the procedure whereby a compensation order can be made in the course of criminal proceedings in favour of the immediate victim of a crime; cf. the Powers of Criminal Courts Act 1973, section 35, and the Criminal Justice (Scotland) Act 1980, section 58(i). See also the Fair Trading Act 1973, section 124, under which the Director General of Fair Trading is charged with the duty of propagating information concerning certain areas of legislation. The problem of "law out of reach" is discussed in chapter 3, section (iv), at p.105, supra.
- (77) Cf. Stein and Shand, at p.247 of Legal Values in Western Society, (Edinburgh University Press), 1974, for a discussion of the view that "competition inevitably results in cuts in prices, improvements in the quality of goods, the incentive for technological improvement, and the freedom of the consumer to choose". Trading standards legislation can also be construed as "holding the ring" for fair competition.
- (78) Cf. Peter Donaldson, at p.64 of Economics of the Real World (Penguin, Harmondsworth), 1978. The extent to which the particular nation state is able to exert control upon the macro-economic environment must not however be exaggerated; in the face of world recession, the particular nation state can do little but adjust to recession conditions, which of course has the effect of adding momentum to the recession.

Here again, as with chapter 2, section (iii), at p.69, we find confirmation of the imperative need for universal world government and of the bankruptcy of the nation state as a specific manifestation of the contradiction of restricted unity.

- (79) Cf. Adam Smith, The Wealth of Nations (Penguin, Harmondsworth), 1982, pp.77-78.
- (80) Peter Donaldson, at p.51 of Economics of the Real World.
- (81) At p.250 of A History of Economic Thought (Penguin, Harmondsworth), 1967.
- (82) Campbell, at p.200 of The Left and Rights.
- (83) Cf. Bertrand Russell, at p.94 of The Case for Socialism, in In Praise of Idleness (Unwin, London), 1960.
- (84) See generally chapter 3, section (iii), at p.95.
- (85) Law, Legislation and Liberty, volume 2, at p.7.
- (86) Law, Legislation and Liberty, volume 2, at p.109.
- (87) The term appears to have originated with Engels.
- (88) Cf. Engels' letter to Joseph Bloch, which appears under the title Letter on Historical Materialism, in The Marx-Engels Reader, at p.760.
- (89) Ibid, p.761.
- (90) Ibid, p.763.
- (91) Cf. Engels' letter to Franz Mehring, at p.767 of The Marx-Engels Reader; "once a historical element has been brought into the world by another, ultimately economic causes, it reacts, can react on its environment and even on the causes that have given rise to it".
- (92) Engels' letter to Joseph Bloch, at p.765 of The Marx-Engels Reader.
- (93) Ibid, p.763.
- (94) Ibid, p.760.
- (95) Ibid, p.765.
- (96) Peter Singer, at p.40 of Marx; "The conception of society as an interconnected totality is about as precise an instrument of historical analysis as a bowl of porridge. Anything at all can be deduced from it. No observation could ever refute it."
- (97) This much was established at the outset of the present essay. Cf. chapter 1, at p.2, supra; "We may say, provisionally,

that justice is in some sense the substantively, and of course also the formally, ideal order."

- (98) See generally chapter 4, section (ii), at p.117, supra.
- (99) See generally John Rawls, A Theory of Justice.
- (100) Cf. D.D. Raphael, at p.165 of Problems of Political Philosophy (MacMillan, London), 1970.
- (101) Cf. Hayek, at p.31 of Law, Legislation and Liberty, volume 2; "Justice is an attribute of human conduct." See also chapter 3, section (iii), at p.97, supra.
- (102) See generally chapter 2, section (ii), at p.44, supra.
- (103) See generally pp.64-69, supra.
- (104) Cf. chapter 4, section (ii), at p.136, supra.
- (105) Chapter 2, section (ii), at p.56, supra.
- (106) On justice as an essentially legalistic concept, cf. chapter 1, section (i), at p.3, supra; "The concepts of law and justice are analytically tied, but the relationship is not one of mere synonymy. Justice is a noumenon, an absolute against which all phenomenal, particular legal systems and the norms thereof stand to be evaluated."
- (107) Cf. chapter 4, section (ii), at p.146, supra.
- (108) This latter category corresponds to what Raphael refers to as "the claims of general social order"; cf. Problems of Political Philosophy, at p.165.
- (109) Thus it is the province of justice to bring the operation of self-interest into harmony with the common good. Cf. chapter 4, section (ii), at p.147, supra.
- (110) Cf. chapter 4, section (ii), at p.146, supra.
- (111) Cf. chapter 3, section (ii), at p.74, supra.
- (112) Cf. chapter 4, section (ii), at p.134, supra.
- (113) Cf. chapter 4, section (ii), at p.133, supra.
- (114) In chapter 3, section (ii), at p.87, supra.
- (115) It is suggested that this would also be the correct line of approach in solving the problem of the requisitioning of a car to save the sick man which was set in chapter 3, section (ii), at p.86, supra.
- (116) At p.57, supra.
- (117) Hence, in chapter 2, section (ii), at p.45, the role of societal values was identified as arising "in relation to

the perceived logical inadequacy of subjective rationality as a conception of will".

- (118) Cf. chapter 3, section (ii), at p.89, supra.
- (119) See generally chapter 3, section (ii), at p.70, supra.
- (120) For a discussion of the imperative need for international government, cf. chapter 2, section (iii), at pp.67-69, supra.
- (121) For an analysis of recession, the trade cycle, and so forth, cf. chapter 3, section (iii), at p.100, supra. Reference may also be had to Peter Singer's Marx, at pp.69-72.
- (122) In British Journal of Political Science, vol.4, 1974, pp.1-16.
- (123) Cf. chapter 4, section (ii), at p.139, supra.
- (124) At p.146 of chapter 4, section (ii), supra.
- (125) Cranston, for example, defines human rights as rights to "something of which no-one may be deprived without a grave affront to justice"; at p.52 of "Human Rights, Real and Supposed", in D.D. Raphael (Ed.) Political Theory and the Rights of Man (MacMillan, London), 1967. Campbell, however, at p.128 of The Left and Rights, refers to and castigates "the usually unargued dogma that justice must always override all other moral considerations".
- (126) William Shakespeare, The Merchant of Venice, at p.234 of The Complete Works of William Shakespeare, (Cambridge University Press), 1980.
- (127) At p.167 of Problems of Political Philosophy.
- (128) Cf. chapter 3, section (ii), at p.90, supra.

BIBLIOGRAPHY

1. STATUTES

LOCAL GOVERNMENT ACT	1888
HOUSING, TOWN PLANNING ETC. ACT	1909
PUBLIC HEALTH ACTS	1936 & 1961
WEIGHTS AND MEASURES ACT	1963
FAMILY ALLOWANCES ACT	1965
NATIONAL INSURANCE ACTS	1965 - 1974
MINISTRY OF SOCIAL SECURITY ACT	1966
FAMILY INCOME SUPPLEMENT ACT	1970
INCOME AND CORPORATION TAXES ACT	1970
TOWN AND COUNTRY PLANNING ACT	1971
FINANCE ACT	1971
HOUSING FINANCE ACT	1972
FAIR TRADING ACT	1973
POWERS OF CRIMINAL COURTS ACT	1973
PRICES ACT	1974
LAND TENURE REFORM (SCOTLAND) ACT	1974
CRIMINAL JUSTICE (SCOTLAND) ACT	1980

2. CASES

WALKER V WHITWELL (1916) S.C. 757

MAYOR OF BRADFORD V PICKLES (1895) A.C. 587

REGINA V THE GREATER LONDON COUNCIL, EX PARTE BROMLEY
LONDON BOROUGH COUNCIL, THE TIMES LAW REPORTS,
11 NOVEMBER 1981, at p.14.

NUNEMACHER V STATE 1906 129 WISCONSIN 190

3. JOURNALS

"NEW STATESMAN" , 13 APRIL 1979.

"SUNDAY TIMES REVIEW" , 13 MARCH 1983.

"SUNDAY TIMES" , 27 OCTOBER 1985.

4. ARTICLES

ADOLF A. BERLE, Jr. "MARX WAS WRONG AND SO IS
KHRUSHCHEV" REPRODUCED IN RICHARD T. GILL, ECONOMICS
- A TEXT WITH READINGS (2ND. ED.) (GOODYEAR,
CALIFORNIA), 1975.

T.D. CAMPBELL, "HUMANITY BEFORE JUSTICE", BRITISH
JOURNAL OF POLITICAL SCIENCE, VOLUME 4, 1974.

M. CRANSTON, "HUMAN RIGHTS, REAL AND SUPPOSED", IN
D.D. RAPHAEL (ED.), POLITICAL THEORY AND THE RIGHTS
OF MAN, (MACMILLAN, LONDON), 1967.

LAWRENCE H. DAVIS, "PRISONERS, PARADOX AND RATIONALITY",
AMERICAN PHILOSOPHICAL QUARTERLY, 14, 1977.

PHILIPPA FOOT, "MORAL BELIEFS", IN PHILIPPA FOOT (ED.),
THEORIES OF ETHICS (OXFORD UNIVERSITY PRESS), 1967.

LON L. FULLER, "THE MORALITY OF LAW", REPRODUCED IN
LORD LLOYD, INTRODUCTION TO JURISPRUDENCE, 3RD ED.,
(STEVENS AND SONS LTD., LONDON), 1972.

ZIYAD I. HUSAMI, "MARX ON DISTRIBUTIVE JUSTICE",
PHILOSOPHY AND PUBLIC AFFAIRS, 8,1,1978.

HANS KELSEN, "THE PURE THEORY OF LAW", THE LAW
QUARTERLY REVIEW, (STEVENS AND SONS LTD.), VOLUME
50, OCTOBER 1934, p.475.

DAVID LEWIS, "PRISONERS' DILEMMA IS A NEWCOMB PROBLEM",
PHILOSOPHY AND PUBLIC AFFAIRS, 8,3,1979.

ALF ROSS, "Tu-Tu", REPRODUCED IN LLOYD, INTRODUCTION
TO JURISPRUDENCE.

J.R. SEARLE, "HOW TO DERIVE 'OUGHT' FROM 'IS'",
PHILOSOPHICAL REVIEW 73 (1964).

J. STALIN, "POLITICAL REPORT OF THE CENTRAL COMMITTEE
TO THE XVI CONGRESS", REPRODUCED IN LLOYD, INTRODUCTION
TO JURISPRUDENCE.

HOWARD M. WACHTEL, "SOCIAL OWNERSHIP AND MARKETS IN
YUGOSLAVIA", REPRODUCED IN GILL, ECONOMICS - A TEXT
WITH READINGS.

ALLEN W. WOOD, "THE MARXIAN CRITIQUE OF JUSTICE",
PHILOSOPHY AND PUBLIC AFFAIRS, SPRING 1972, 1,4.

5. ANTHOLOGIES

THE MARX-ENGELS READER, ED. ROBERT C. TUCKER,
(W.W. NORTON & CO., NEW YORK), 1978.

BY KARL MARX AND FRIEDRICH ENGELS;

(1) MANIFESTO OF THE COMMUNIST PARTY

BY KARL MARX;

- (1) A CONTRIBUTION TO THE CRITIQUE OF POLITICAL
ECONOMY.
- (2) CONTRIBUTION TO THE CRITIQUE OF HEGEL'S
'PHILOSOPHY OF RIGHT'.
- (3) ON THE JEWISH QUESTION.
- (4) ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS OF 1844.
- (5) THE GERMAN IDEOLOGY.
- (6) LETTER TO P.V. ANNENKOV, UNDER THE TITLE OF
SOCIETY AND ECONOMY IN HISTORY.

- (7) WAGE LABOUR AND CAPITAL
- (8) THE COMING UPHEAVAL, FROM THE POVERTY OF PHILOSOPHY.
- (9) GRUNDRISSE
- (10) CAPITAL, VOLUME ONE
- (11) CAPITAL, VOLUME THREE
- (12) CRITIQUE OF THE GOTHA PROGRAM
- (13) CIRCULAR LETTER TO BEBEL, LIEBKNECHT, BRACKE AND OTHERS
- (14) SPEECH AT THE ANNIVERSARY OF THE PEOPLE'S PAPER
- (15) INAUGURAL ADDRESS OF THE WORKING MEN'S INTERNATIONAL ASSOCIATION
- (16) THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE
- (17) THE CIVIL WAR IN FRANCE
- (18) THE FUTURE RESULTS OF BRITISH RULE IN INDIA
- (19) LETTER TO ENGELS, UNDER THE TITLE OF EUROPOLENTRIC WORLD REVOLUTION

BY FRIEDRICH ENGELS;

- (1) THE TACTICS OF SOCIAL DEMOCRACY
- (2) SPEECH AT THE GRAVESIDE OF KARL MARX
- (3) SOCIALISM: UTOPIAN AND SCIENTIFIC
- (4) ON MORALITY
- (5) VERSUS THE ANARCHISTS
- (6) ON AUTHORITY
- (7) THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE
- (8) LETTERS TO JOSEPH BLOCH AND FRANZ MEHRING, UNDER THE TITLE OF LETTERS ON HISTORICAL MATERIALISM

KARL MARX: SELECTED WRITINGS, Ed. DAVID McLELLAN (OXFORD UNIVERSITY PRESS), 1977.

- (1) THE POVERTY OF PHILOSOPHY
- (2) GRUNDRISSE
- (3) THE LEADING ARTICLE FROM THE KOLNISCHE ZEITUNG
- (4) SPEECH ON FREE TRADE
- (5) ON DARWIN
- (6) CAPITAL, VOLUME ONE
- (7) CAPITAL, VOLUME THREE
- (8) PRIVATE PROPERTY AND COMMUNISM FROM THE GERMAN IDEOLOGY
- (9) THEORIES OF SURPLUS VALUE
- (10) ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS
- (11) UTILITARIANISM

MARX IN HIS OWN WORDS, ERNST FISCHER, (PENGUIN, HARMONDSWORTH), 1973.

- (1) CAPITAL, VOLUME THREE
- (2) FOUNDATIONS OF THE CRITIQUE OF POLITICAL ECONOMY

THEIR MORALS AND OURS (PATHFINDER PRESS, NEW YORK), 1979.

- (1) THEIR MORALS AND OURS, BY LEON TROTSKY
- (2) THE MORALISTS AND SYCOPHANTS AGAINST MARXISM, BY LEON TROTSKY
- (3) MEANS AND ENDS, BY JOHN DEWEY
- (4) LIBERAL MORALITY, BY GEORGE NOVACK

THE SOCIAL CONTRACT AND DISCOURSES (DENT, LONDON), 1973.

- (1) A DISCOURSE ON THE ORIGIN OF INEQUALITY, BY JEAN-JACQUES ROUSSEAU

THE ESSENTIAL LEFT (UNWIN, LONDON), 1960

- (1) THE STATE AND REVOLUTION, BY V.I. LENIN

LENIN: SELECTED WORKS (LAWRENCE AND WISHART, LONDON), 1969

- (1) FOURTH ANNIVERSARY OF THE OCTOBER REVOLUTION

THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, (CAMBRIDGE UNIVERSITY PRESS), 1980

- (1) MACBETH
- (2) THE MERCHANT OF VENICE

6. BOOKS

H.B. ACTON, KANT'S MORAL PHILOSOPHY (MACMILLAN, LONDON), 1970

A.J. AYER, LANGUAGE, TRUTH AND LOGIC (PENGUIN, HARMONDSWORTH), 1978

WILLIAM J. BARBER, A HISTORY OF ECONOMIC THOUGHT, (PENGUIN, HARMONDSWORTH), 1967

JAMES BARR, THE UNITED FREE CHURCH OF SCOTLAND, (ALLENSON AND CO., LTD., LONDON), 1934

ANDREW BOYD, HOLY WAR IN BELFAST, (ANVIL, DUBLIN), 1969

R.B. BRAITHWAITE, THEORY OF GAMES AS A TOOL FOR THE MORAL PHILOSOPHER (CAMBRIDGE UNIVERSITY PRESS), 1955

JACOB BRONOWSKI, THE ASCENT OF MAN, (BBC, LONDON), 1973

ALLEN E. BUCHANON, MARX AND JUSTICE (METHUEN, LONDON), 1982

TOM CAMPBELL, THE LEFT AND RIGHTS (ROUTLEDGE AND KEGAN PAUL, LONDON), 1983

PETER DONALDSON, ECONOMICS OF THE REAL WORLD (PENGUIN, HARMONDSWORTH), 1973
GUIDE TO THE BRITISH ECONOMY (4th ed.) (PENGUIN, HARMONDSWORTH), 1976

E.R. EMMET, LEARNING TO PHILOSOPHISE (PENGUIN, HARMONDSWORTH), 1968

FRIEDRICH ENGELS, ANTI DUHRING: HERR EUGEN DUHRING'S REVOLUTION IN SCIENCE (LAWRENCE AND WISHART, LONDON), 1955

D. HAY FLEMING, THE SCOTTISH REFORMATION, (SCOTTISH REFORMATION SOCIETY, EDINBURGH), 1960

J.F. GARNER, ADMINISTRATIVE LAW (5th ed.), (BUTTERWORTH, LONDON), 1979

RICHARD T. GILL, ECONOMICS - A TEXT WITH READINGS (2nd ed.), (GOODYEAR, CALIFORNIA), 1975

J.A.G. GRIFFITHS, THE POLITICS OF THE JUDICIARY (COLLINS, GLASGOW), 1977

R.M. HARE, THE LANGUAGE OF MORALS (OXFORD UNIVERSITY PRESS), 1952

H.L.A. HART, THE CONCEPT OF LAW (OXFORD UNIVERSITY PRESS), 1961

HARVEY AND BATHER, THE BRITISH CONSTITUTION (3rd ed.) (MACMILLAN, LONDON), 1963

F.A. HAYEK, LAW, LEGISLATION AND LIBERTY (ROUTLEDGE AND KEGAN PAUL, LONDON), 1982

G.W.F. HEGEL, PHILOSOPHY OF RIGHT (OXFORD UNIVERSITY PRESS), 1979. TRANS. T.M. KNOX

JOHANNES HIRSCHBERGER, A SHORT HISTORY OF WESTERN PHILOSOPHY (LUTTERWORTH PRESS, BATH), 1976

THOMAS HOBBS, LEVIATHAN (COLLINS, LONDON), 1962

JUSTINIAN, JUSTINIAN'S CODE (UNIVERSITY OF ZURICH), 1974

MAX KASER, ROMAN PRIVATE LAW (UNIVERSITY OF SOUTH AFRICA), 1980

J.M. KELLY, ROMAN LITIGATION (CLARENDON PRESS, OXFORD), 1966

GEORGE A. KELLY, THE CATHOLIC MARRIAGE MANUAL, (ROBERT HALE LTD., LONDON), 1958

HANS KELSEN, THE COMMUNIST THEORY OF LAW (STEVENS AND SONS, LONDON), 1955

WHAT IS JUSTICE? (UNIVERSITY OF CALIFORNIA PRESS), 1957

GENERAL THEORY OF LAW AND STATE (RUSSELL AND RUSSELL, NEW YORK), 1973

JOHN KEMP, THE PHILOSOPHY OF KANT (OXFORD UNIVERSITY PRESS), 1979

C.S. LEWIS, MERE CHRISTIANITY (COLLINS, GLASGOW), 1973

ALBERT S. LINDEMANN, A HISTORY OF EUROPEAN SOCIALISM (YALE UNIVERSITY PRESS), 1983

LORD LLOYD, INTRODUCTION TO JURISPRUDENCE (3rd ed.) (STEVENS AND SONS, LONDON), 1972

THE IDEA OF LAW (PENGUIN, HARMONDSWORTH), 1974

J.R. LUCAS, ON JUSTICE (CLARENDON PRESS, OXFORD), 1980

DAVID LYONS, FORMS AND LIMITS OF UTILITARIANISM, (OXFORD UNIVERSITY PRESS), 1965

NEIL MACCORMICK, LEGAL REASONING AND LEGAL THEORY, (CLARENDON PRESS, OXFORD), 1978

J.L. MACKIE, ETHICS (INVENTING RIGHT AND WRONG), (PENGUIN, HARMONDSWORTH), 1981

ALASDAIR MACINTYRE, A SHORT HISTORY OF ETHICS (ROUTLEDGE AND KEGAN PAUL, LONDON), 1967

DAVID MCLELLAN, ENGELS (COLLINS, GLASGOW), 1977

JOSEPH MCCABE, THE SOCIAL RECORD OF CHRISTIANITY (WATTS & CO., LONDON), 1935

BRYAN MAGEE, POPPER (COLLINS, GLASGOW), 1978

THOMAS ROBERT MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION (PENGUIN, HARMONDSWORTH), 1982

HERBERT MARCUS, REASON AND REVOLUTION (ROUTLEDGE AND KEGAN PAUL, LONDON), 1954
NEGATIONS (ALLEN LANE/PENGUIN PRESS, LONDON), 1968

KARL MARX, CAPITAL, VOLUME ONE (PENGUIN, HARMONDSWORTH) 1976

KARL MARX, CAPITAL, VOLUME THREE (PROGRESS PUBLISHERS, MOSCOW), 1966

MARX AND ENGELS, MANIFESTO OF THE COMMUNIST PARTY (INTRODUCTION BY A.J.P. TAYLOR) (PENGUIN, HARMONDSWORTH), 1967

JOHN STUART MILL, UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT. (J.M. DENT & SONS LTD., LONDON), 1910

G.E. MOORE, PRINCIPIA ETHICA (CAMBRIDGE UNIVERSITY PRESS), 1978

ROBERT NOZICK, ANARCHY, STATE AND UTOPIA (BLACKWELL, OXFORD), 1974

GEORGE ORWELL, NINETEEN-EIGHTY-FOUR (PENGUIN, HARMONDSWORTH), 1954
INSIDE THE WHALE AND OTHER ESSAYS (PENGUIN, HARMONDSWORTH), 1962
THE ROAD TO WIGAN PIER (PENGUIN, HARMONDSWORTH), 1962

CORRADO PALLENBERG, VATICAN FINANCES (PENGUIN, HARMONDSWORTH), 1973

BARRY PINSON, PINSON ON REVENUE LAW (16th ed.) (SWEET & MAXWELL, LONDON), 1985

PLATO, THE REPUBLIC (PENGUIN, HARMONDSWORTH), 1980

KARL POPPER, THE OPEN SOCIETY AND ITS ENEMIES (ROUTLEDGE & KEGAN PAUL, LONDON), 1966

D.D. RAPHAEL, PROBLEMS OF POLITICAL PHILOSOPHY (MACMILLAN, LONDON), 1970

JOHN RAWLS, A THEORY OF JUSTICE (OXFORD UNIVERSITY PRESS), 1973

E.M. ROBERTS, LENIN AND THE DOWNFALL OF TSARIST RUSSIA (METHUEN, LONDON), 1966

JEAN-JACQUES ROUSSEAU, DU CONTRAT SOCIAL (UNION GENERALE D'EDITIONS, PARIS), 1973

BERTRAND RUSSELL, BERTRAND RUSSELL'S BEST (GEORGE ALLEN & UNWIN, LONDON), 1975
UNPOPULAR ESSAYS (GEORGE ALLEN & UNWIN, LONDON), 1976
IN PRAISE OF IDLENESS (GEORGE ALLEN & UNWIN, LONDON), 1976
HISTORY OF WESTERN PHILOSOPHY (UNWIN, LONDON), 1979

PETER SINGER, MARX (OXFORD UNIVERSITY PRESS), 1980
HEGEL (OXFORD UNIVERSITY PRESS), 1983

ADAM SMITH, THE WEALTH OF NATIONS (PENGUIN,
HARMONDSWORTH), 1982

LOUIS L. SNYDER, THE WORLD IN THE TWENTIETH CENTURY,
(VAN NOSTRAND INC., NEW YORK), 1964

PETER STEIN AND JOHN SHAND, LEGAL VALUES IN WESTERN
SOCIETY (EDINBURGH UNIVERSITY PRESS), 1974

CHARLES TAYLOR, HEGEL (CAMBRIDGE UNIVERSITY PRESS),
1977

ROBERT C. TUCKER, THE MARXIAN REVOLUTIONARY IDEA
(GEORGE ALLEN AND UNWIN, LONDON), 1970

ROBERTO MANGABEIRA UNGER, LAW IN MODERN SOCIETY
(MACMILLAN, LONDON), 1977

VIRGIL, AENEID (TRANSLATION BY W.T. JACKSON KNIGHT)
(PENGUIN, HARMONDSWORTH), 1956

D.M. WALKER, PRINCIPLES OF SCOTTISH PRIVATE LAW
(2nd ed.) (CLARENDON PRESS, OXFORD), 1975
THE SCOTTISH LEGAL SYSTEM (4th ed.)
(W. GREEN & SON, EDINBURGH), 1976

C.J. WARNOCK, THE OBJECT OF MORALITY (METHUEN, LONDON),
1971

FRANCOIS WENDEL, CALVIN (COLLINS, LONDON), 1965

ALLEN W. WOOD, KARL MARX (ROUTLEDGE & KEGAN PAUL,
LONDON), 1981

THE BIBLE, KING JAMES EDITION

7. MISCELLANEOUS

JOURNALS OF THE STAIR SOCIETY, VOLUMES 27 & 28,
JUSTICIARY CASES, 1624-50, VOLUMES 2 & 3

UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948.

